

MONTREAL AVIATION PROTOCOLS
NOS. 3 AND 4

REPORT
OF THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

ON

EXECUTIVE B, 95TH CONGRESS, 1ST SESSION

TWO RELATED PROTOCOLS TO AMEND THE CONVENTION FOR
THE UNIFICATION OF CERTAIN RULES RELATING TO INTER-
NATIONAL CARRIAGE BY AIR, SIGNED AT WARSAW ON OCTO-
BER 12, 1929 ("THE WARSAW CONVENTION"), AS AMENDED,
DONE AT MONTREAL ON SEPTEMBER 25, 1975



FEBRUARY 10, 1983.—Ordered to be printed

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MONTREAL AVIATION PROTOCOLS 3 AND 4

FEBRUARY 10, 1983.—Ordered to be printed

Under authority of the order of the Senate of February 3, 1983

Mr. PERCY, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany Ex. B, 95-1]

The Committee on Foreign Relations, to which was referred the two related Protocols done at Montreal on September 25, 1975, entitled: A. Additional Protocol No. 3 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 12, 1929, As Amended by the Protocols done at The Hague, on September 28, 1955, and at the Guatemala City, March 8, 1971 (hereinafter, Montreal Protocol No. 3); and B. Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 12, 1929, as Amended by the Protocol done at the Hague on September 8, 1955 (hereinafter, Montreal Protocol No. 4), having considered the same, reports favorably thereon with certain conditions and recommends that the Senate give its advice and consent to ratification thereof.

PURPOSE

Montreal Protocols 3 and 4 are amendments to the original Warsaw Convention of 1929 designed to modernize the rules applicable to the international air carriage of passengers, baggage, and cargo. In combination with amendments made at an earlier international conference in Guatemala City, they would provide for the liability of airlines

without proof of fault at much higher levels than the original Warsaw system (even as amended over the years), promote speedier settlement of claims, improve the rules relating to baggage handling, ticketing procedures, and cargo documentation, and generally foster the international uniformity and cooperation which were original goals of the Warsaw treaty. The Committee's approval, however, is conditional upon the establishment and continued functioning of a satisfactory Supplemental Compensation Plan, as envisaged under Article 35A of the revised convention, to increase substantially the recoveries available to U.S. citizens.

BACKGROUND

The Convention for the Unification of Certain Rules Relating to International Transportation by Air (the Warsaw Convention) was drawn up in 1929. The United States became a party in 1934. Presently there are 117 countries which are parties to the Convention. The Warsaw Convention establishes uniform rules as to the rights and obligations between air carriers and users of international air transportation, and creates uniformity with respect to transportation documentation—passenger tickets, baggage checks, and air way-bills. It also establishes uniform rules relating to the liability of an air carrier to its passengers in cases of death or injury from an accident, or delay.

Since the early 1950's the United States has taken the lead to increase the Warsaw limit of liability for death or injury to passengers (\$8,300). In 1955 a doubling of the limit, to \$16,000, was agreed to at The Hague. The Hague Protocol was submitted to the Senate in 1964 and 1965 for its advice and consent to ratification. It was accompanied by proposed legislation requiring air carriers to provide international air passengers with automatic accident insurance in the amount of \$50,000 for each passenger killed or seriously injured, in addition to the amount that could be recovered under the Protocol. The legislation also provided for actual medical expenses to be recovered up to \$10,000. The effective limit thus would have been \$66,600 with an additional \$10,000 for medical expenses. The Senate Foreign Relations Committee recommended ratification of The Hague Protocol by a vote of 16-1, if the proposed insurance legislation were also enacted. However, because of objections to the automatic insurance proposal, the legislation failed to obtain support, and the Protocol was never put to a vote.

In the summer and fall of 1965 efforts were made by the United States to obtain support for increasing the Warsaw limits to \$100,000 per passenger. These efforts were unsuccessful, and the United States announced that it would withdraw from the Convention. Notice of denunciation was deposited in November 1965, to take effect in May 1966. At the same time the United States announced that it would be willing to withdraw the denunciation if, before it was to take effect, there were a reasonable prospect of an international agreement on a limit of liability in the area of \$100,000 or on uniform rules with no limit of liability, and if, pending the entry into force of such international agreement, a provisional arrangement were concluded among the principal international airlines which would waive the Warsaw limits up to \$75,000 per passenger. At a special ICAO meeting held in Montreal

in February 1966, only one country supported the United States proposal for the Warsaw/Hague rules with a \$100,000 limit, and 40 countries voted against it. Another proposal, providing for a \$100,000 limit inclusive of legal costs and \$70,000 exclusive, received only slightly better support—5 States for and 36 against. The meeting ended without agreement being reached. However, the United States withdrew its denunciation in May just before it was to have taken effect, when the principal United States and foreign international air carriers agreed to a special inter-carrier arrangement, known popularly as the "Montreal Agreement." CAB Agreement 18900, approved by Order F-23680, May 13, 1966.

The Montreal Agreement currently applies in the case of international air transportation to or from the United States (or having a stopping place within the United States). It contains two major elements:

Air carriers participating in this agreement waive their defenses under Art. 20(1) of the Warsaw Convention (all necessary measures taken to avoid damages or impossibility of taking such measures)

Such carriers accept a limit of liability in the cases of passenger death or injury of \$75,000 (including legal fees and costs)

It should be noted that the "willful misconduct" clause (Art. 25) of the Warsaw Convention is still applicable and, thus, the \$75,000 limit is avoidable. The U.S. Government continued to pursue the objectives of revising the treaty so as to increase recoveries for claimants and establish a system providing adequate, certain and speedy recovery.

Subsequent negotiations on the passenger liability question resulted in the adoption of the Guatemala City Protocol, opened for signature March 8, 1971, which increased the passenger liability limit to \$100,000 (now approximately \$120,000 with the devaluation of the dollar), and provided for a baggage liability limit of \$1,000 per passenger (in lieu of the existing \$9.00 per pound). The Guatemala City Protocol contains a system of no-fault liability, a clause to provide for the jurisdiction of U.S. courts under most circumstances, and a provision known as the "settlement inducement clause" which permits courts to impose attorneys' fees if the carrier does not make a timely settlement offer at least equivalent to the ultimate recovery. Finally, the Guatemala City Protocol permits a nation to adopt a domestic system to supplement the passenger liability limit. The United States insisted upon this latter provision.

A domestic supplemental compensation plan allowing for a total passenger liability limit of \$317,000 (\$200,000 in coverage in addition to the carrier's liability of \$120,000 under the Protocol) was developed by the U.S. Government with Prudential Insurance Company as the Contractor. The plan was approved by the Civil Aeronautics Board as an inter-carrier agreement, pursuant to section 412 of the Federal Aviation Act, on July 20, 1977.

The detailed provisions relating to cargo shipments were not considered at the Guatemala City Diplomatic Conference. However, it was contemplated that subsequent negotiations would be held to revise these provisions. Negotiations with respect to the cargo provisions were held at an ICAO Legal Subcommittee meeting in Montreal in September 1972; an ICAO Legal Committee meeting in Montreal in October 1974; and a Working Group meeting to resolve conflicts be-

tween the cargo amendments and the provisions of the Guatemala City Protocol in Montreal in April 1975. The draft cargo provisions prepared by the 1974 ICAO Legal Committee formed the basis for the Diplomatic Conference held in Montreal from September 3 through 25, 1975.

In the period preceding the 1975 Montreal Diplomatic Conference, it also became apparent that the role of gold as the basis for world currency conversion would end. Since Article 22 of the Convention (and as amended both by The Hague and Guatemala City Protocols) provides for conversion of the liability limits to national currencies on the basis of the "poincaré franc"—a measure of gold equivalency—it became apparent that a new method for currency conversion would have to be found. Following U.S. initiatives, Norway ultimately proposed that the gold monetary conversion clause be made at the Diplomatic Conference. It proposed substitution of the "Special Drawing Right" (SDR), a monetary unit used by the International Monetary Fund (IMF).

The Montreal Conference adopted four separate protocols. Three of these protocols (Additional Protocols No. 1-3) were limited in practical effect to changing the gold clause into an SDR clause. Protocol No. 1 amends the Warsaw Convention. Protocol No. 2 amends the Hague Protocol. Protocol No. 3 amends the Guatemala City Protocol. Thus Protocol No. 3 contains rules adopted at Guatemala City concerning passengers and baggage, and the SDR clause developed at Montreal. Montreal Protocol No. 3 includes basic amendments to the cargo provisions of the Warsaw Convention as revised by the Hague Protocol, including an SDR clause.

MAJOR PROVISIONS

The provisions of the Protocols must be read in relation to the provisions of the original Warsaw Convention of 1929 and those subsequent modifications to which the United States will now choose to adhere. The United States is presently a party only to the Warsaw Convention itself; it is not a party to any of the subsequent protocols (Hague, 1955; Guatemala City, 1971) which were revisions of the Warsaw Convention. By ratifying Protocols No. 3 and No. 4, the United States will adopt all of the newest versions of the rules. A detailed description of these provisions is included below. However, in summary the two Protocols provide as follows:

MONTREAL PROTOCOL 3

This Protocol amends the Guatemala City Protocol. The following provisions are included in the Guatemala City Protocol:

An unbreakable airline liability limit of approximately \$120,000, regardless of fault, in the case of passenger death or injury, \$1,000 per passenger baggage liability limit;

A settlement inducement clause designed to force airlines to settle a claim within six months by subjecting them to added costs (including attorney fees) if in a sub-

sequent trial a court awards more than the airline's offer;

Facilitation of suits against foreign airlines in the U.S. by permitting an action in the domicile of the passenger if the airline has an "establishment" there;

Recognition of the right of each participating nation to establish a supplemental compensation plan to operate within its territories.

In accordance with this latter provision the Civil Aeronautics Board in July 1977 approved a Supplemental Compensation Plan along the following lines:

(1) An additional \$200,000 of available recovery for loss of life—increasing the total to \$320,000—and unlimited medical coverage; and

(2) A \$2.00 per ticket surcharge to provide for a compensation fund to pay supplemental recoveries (the surcharge to be adjusted and probably reduced over time).

MONTREAL PROTOCOL NO. 4

This Protocol amends and updates the cargo provisions of the Warsaw Convention, as amended by Hague. By ratifying Montreal Protocol No. 4, the United States would adopt the most recent rules with respect to cargo documentation and liability limits in cargo cases. The Protocol sets a limit of 17 SDRs (about \$21) per kilogram in the case of cargo.

COMMITTEE ACTION

On July 26, 1977, the Committee held hearings on the Protocols and heard testimony from a number of administration and public witnesses. It considered them at a meeting of the Committee on September 20, 1977, but took no action.

On September 29, 1981, the Committee again heard testimony from public witnesses on the Protocols and on October 22 received written confirmation that the Reagan administration supported their ratification. On November 17, 1981, the Committee voted 16 to 1 to report the Protocols favorably to the Senate for advice and consent with three provisos which are described below. Senators voting in the affirmative were Percy, Baker, Helms, Hayakawa, Lugar, Mathias, Kassebaum, Boschwitz, Pell, Glenn, Sarbanes, Zorinsky, Tsongas, Cranston and Dodd. Senator Biden voted no.

The Montreal Protocols are one of six treaties left pending at the adjournment of the 97th Congress. They were therefore automatically re-referred to the Committee under Senate rules. The Committee considered them again on February 3, 1983 and ordered them favorably reported by a voice vote. Senators Pressler and Biden asked to be recorded no and Senator Tsongas voted present. Other Senators constituting a quorum were Senators Percy, Helms, Lugar, Mathias, Boschwitz, and Pell. Subsequently, the following Senators asked to be recorded in favor of the Protocols: Baker, Kassebaum, Murkowski, Glenn, Sarbanes, Zorinsky, Cranston, and Dodd.

COMMITTEE COMMENTS

The Committee agrees with the position taken by the Ford, Carter and Reagan administrations in support of U.S. ratification of Montreal Protocols No. 3 and 4. We support ratification with the understanding that a Supplemental Compensation Plan will be in place to increase the recoveries available to U.S. citizens.

The Montreal Protocols are the result of decades of effort by the United States to improve the existing Warsaw treaty system. The United States has been a party to that system since 1934; limitations on airline liability are therefore not a new concept, but a fact of life in international aviation for many years. The purpose of this arrangement has been to provide a uniform international system of rules and practices for the protection of travelers and shippers. It would bring airlines around the world up to at least a minimum level of compensation for loss of life, insure quick and reliable recoveries (in most cases within six months), and promote greater efficiency in the handling of cargo and baggage.

The Committee is concerned that the failure to follow through on the Montreal Protocols, which were the result of long and difficult efforts by the United States, might not only undercut our influence within the international civil aviation organization and other forums, but would actually spell the end of the Warsaw Convention. That treaty is seriously outdated at the present time, and without the ratification of these modernizing amendments and the continued vigorous leadership of the United States, it is doubtful that the Warsaw regime will survive. The result could be a lengthy period of confusion during which the rules of jurisdiction and the standards for liability are completely unpredictable.

The Committee is well aware that the trade-off for participating in the Warsaw system, as amended by the Protocols, is the agreement to an absolute ceiling on the liability of airlines to each accident victim. If the limit set by the Protocol of approximately \$120,000 (the estimated current value of 100,000 SDRs, or Special Drawing Rights) was absolute and could not be supplemented by a domestic compensation plan, the level would clearly be unacceptable. Even with an additional \$200,000 possible recovery as allowed under Article 35A of Protocol 3, it will be desirable to seek continued increases in the agreed limit to keep pace with inflation and other circumstances.

However, on balance, the Committee believes that the special features of international civil aviation do justify the continued participation of the United States in a system of limited liability so long as it operates to ensure swift, sure and sufficient compensation when supplemented by a domestic compensation plan which substantially increases the recoveries for U.S. citizens. In effect, the Senate would be approving a three-tiered system under which the airlines would be liable for the first \$120,000 per passenger, the supplemental plan would provide an additional \$200,000 of coverage, and the individual would be expected to provide for recoveries beyond \$320,000 by private insurance. The \$320,000 limit should be sufficient to cover the large majority of Americans who fly abroad and do so more quickly and reliably with less litigation and related expenses. The fact that this approach has been endorsed overwhelmingly by the American Bar

Association, an organization not generally supportive of no-fault liability systems, is indicative of the strength of the arguments for it.

The Committee was not persuaded by the principal arguments made against the Protocols.

The first is that the level of recoveries allowable under the proposed system, roughly \$320,000 per person, is so low that it cannot be justified. Data provided to the Committee relating to the five most recent domestic airline accidents (in which the Warsaw limits do not apply) shows that 85 percent of the settlement in these cases are less than the level under consideration here. Therefore, the vast majority of Americans would be covered at such a level. However, it should also be noted that in some of these cases the settlements have taken years, with a considerable percentage of the recoveries going to attorneys' fees. For example, a \$400,000 recovery in which the trial attorney receives 25 percent or more of the total would be a recovery to the claimant well below the total available under the proposed system. Attorneys fees of 33 percent and even 40 percent are not uncommon in suits of this kind. Individuals who could expect much larger recoveries would be on notice to insure themselves for higher amounts without passing that cost on to all passengers and without incurring the large percentage cost which normally goes to trial attorneys.

The second point raised against the Protocols is the suggestion that unlimited liability coverage for international air carriers can be purchased for less than the \$2.00 surcharge under the previously proposed Supplemental Compensation Plan, even though the latter would provide coverage limited to \$200,000. The Committee is simply not convinced that this is the case. We have been told by experts in the insurance industry that unlimited insurance for international carriers would probably cost much more than the price paid for domestic travel. In any case, that would be a question to be considered by the CAB in reviewing the cost of a supplemental plan.

The third argument is that the Senate should take no action until the Civil Aeronautics Board has once again reviewed the supplemental compensation plan which it approved four years ago. We are dealing, in some respects, with a chicken and egg problem here. The CAB has taken no further action on the proposed plan since 1977 because it had no reason to think that the Senate would be approving the Montreal Protocols. It would certainly be expected to do so once the Senate takes positive action. The Committee also believes that the CAB, subject to a further judgment by the President, is the appropriate body to judge the factors relating to the cost and structure of a supplemental plan, once the Senate has made the larger decision to support continued U.S. participation in a limited liability system with a supplemental plan in the range of the one previously approved. If anything, the CAB may recommend higher levels of coverage, once it has reviewed the intervening data and heard expert testimony and public arguments. Ultimately, the President himself will make the final judgment on entry into force of the Protocols for the United States. But he would also be the judge, once they are in force, as to whether they continue to be adequate over time. In other words, failure to take positive action in the Senate at this time would simply be a decision in itself against U.S. participation in the proposed system

a decision which the Committee does not think is in the best interests of the vast majority of Americans who fly abroad.

Therefore, the Committee recommends that the Senate approve the proposed resolution of ratification and report the Montreal Protocols favorably to the Senate for advice and consent.

THREE PROVISOS

The Committee ordered the Montreal Protocols reported favorably with three provisos:

First, "that the President shall not deposit the instruments of ratification for the United States until he has determined that a satisfactory supplemental compensation plan, as reviewed and approved by the Civil Aeronautics Board or its appropriate successor, will be in operation for the United States;"

Second, "that the President shall give notice of denunciation of these Protocols by the United States if, at any time after their entry into force for the United States, he determines that a satisfactory supplemental compensation plan, as periodically reviewed by the Civil Aeronautics Board in light of new economic or other relevant circumstances, is not in operation for the United States, or that the best interest of U.S. airline passengers are not otherwise served by continued adherence to these Protocols by the United States;" and

Third, "that the United States government shall continue actively to seek to negotiate higher limits on the liability of carriers than those provided under these Protocols."

These three conditions were adopted by the Committee as "provisos" rather than as "reservations" or "understandings", as such, because they are matters between the Senate and the President and need not appear as provisions of the U.S. instruments of ratification. Nevertheless, if adopted by the Senate, they would have the same force and effect as any other condition included by the Senate—whatever its designation. In short, the President can proceed to ratify the Protocols only by accepting the conditions placed upon U.S. ratification by the Senate.

The first two provisos reflect the Committee's concern that ratification of the Montreal Protocols by the United States and continued U.S. participation in the Warsaw system, as thereby modified, are dependent upon the operation of a domestic Supplemental Compensation Plan to increase the recoveries available to U.S. citizens. The Civil Aeronautics Board would be expected to review and approve such a Supplemental Compensation Plan initially and to conduct periodic reviews of its adequacy at reasonable and regular intervals.

The third proviso reflects the Committee's concern that the limits on airline liability in these Protocols should continue to be periodically increased by agreement of the parties. In that regard, the United States should continue to take the initiative, as it has for years, to see that such limits reflect realistic levels of recovery and changing economic circumstances. The Committee notes that Article 42 of the revised system (See Appendix for consolidated text) would provide for automatic \$15,000 increases in the limit after 5 and 10 years of entry into force. Even such increases are unlikely to keep pace with inflation and other circumstances, however. Therefore, the President

is expected to seek to negotiate even larger increases in the liability limits provided for in the Protocols in whatever international forum and by whatever means he determines to be the most productive of such an outcome.

RECENT DEVELOPMENTS

Since the Committee's last vote on the Protocols in November 1981, several events have confirmed the pressing need for improvements in the existing Warsaw regime. In several recent court cases, judges have expressed open frustration with the existing Warsaw provisions on baggage and freight, and in one case in particular, *Franklin Mint Corporation v. TWA*, the Court of Appeals in the Second Circuit last September announced that as of February 6, 1983, it would no longer enforce the Convention limitation on airline liability for cargo because the Convention no longer provided adequate guidance as to the value of the limitation. The District Court below had spoken with favor about the solution provided in Montreal Protocol #4—which involves the use of the Special Drawing Right (SDR) as a unit of measurement—but concluded that the adoption of this standard was a matter for the Senate, not the courts.

More recently, in December 1982, the District Court for the Northern District of Illinois, while deciding not to follow the more drastic approach of the Second Circuit, nevertheless complained that none of the standards available to measure liability were satisfactory. "What is needed," said the court, "is a treaty amendment, but we do not have that."

The low limits in the Warsaw Convention have also led one court to question the viability and fairness of the original liability limits. In August 1982, the Court of Appeals for the Ninth Circuit questioned whether unsatisfied claimants might not sue the U.S. Government itself in the Court of Claims.

These cases simply emphasize the urgency of the kind of Warsaw modernization and improvements embodied in the Montreal Protocols. Despite a concerted effort last summer by some aviation litigation specialists within the American Bar Association to turn around the ABA's long-standing position in support of ratification, the ABA rejected any such change at its annual meeting in August 1982.

The Committee therefore continues to believe that the Montreal Protocols reflect an important and overdue reform in the international aviation system and urges the Senate to give its advice and consent to ratification.

LETTER DETAILING ADMINISTRATION SUPPORT

DEPARTMENT OF STATE,
Washington, D.C., October 6, 1982.

HON. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: This is in response to your letter of May 18, 1982 to Secretary Haig concerning ratification of Montreal Protocols #3 and 4. The Administration was deeply gratified by the 16-1 vote of the Committee on Foreign Relations in favor of ratification. We

hope that the public and national benefits inherent in these long-awaited amendments to a 50-year-old treaty will prompt a Senate vote for advice and consent in the near future. In such case, the United States can move quickly to shed the 1929 treaty provisions and bring into force the modern rules reflected in Protocols 3 and 4. With regard to the six specified matters raised in your letter, I offer the following views and information:

1. IMPLICATIONS OF U.S. FAILURE TO RATIFY

For nearly 40 years, the United States has prudently exercised a role of unquestioned preeminence in international civil aviation. This leadership began in 1944 with our calling of a world civil aviation conference in Chicago leading to the adoption of the Chicago Convention and the creation of the International Civil Aviation Organization (ICAO), to which over 140 nations of all political ideologies now belong. Through ICAO, a specialized agency within the United Nations, family of organizations, the United States has forged international agreements covering a broad spectrum of important aviation programs, including the establishment of international safety standards and navigation systems, a trilogy of treaties to combat crimes aboard aircraft, hijackings and aviation sabotage, and the instruments now pending ratification, Montreal Protocols 3 and 4. That overall position of world aviation leadership has enabled us to reach equitable bilateral agreements for international air services with a host of sovereign partners, to the benefit of U.S. citizens and airlines alike.

For two decades, the U.S. government urged the international community to modernize some badly outdated provisions of the Warsaw Convention, the most widely adopted private international law treaty in existence. The Montreal Protocols, two innovative instruments designed in large part by U.S. delegations, represent the successful culmination of that resolute U.S. effort. Rejection of the Protocols would seriously undermine our credibility in the international aviation community, as well as our ability to negotiate effectively on multi-lateral aviation issues in the future.

The United States has a vested interest in the Warsaw treaty regime. We have a greater interest than perhaps any other nation in a well-functioning international aviation system, grounded on international cooperation among the nations of the world. Approximately 25 million airline passengers depart the United States destined for some foreign point each year. Last year almost half of them (about 12 million) were American citizens and a third of that number were making trips to destinations outside of Canada, Mexico and Europe—to one or more of the 150 nations throughout the world to which U.S. citizens travel by air. Last year, 52% of the passengers departing this country, including millions of U.S. citizens, used the services of foreign flag airlines. At their initial foreign destinations, hundreds of thousands of these U.S. citizen passengers joined with some 2.5 million Americans residing abroad in international flights aboard the early 3,000 commercial air carriers of all flags now operating worldwide.

Under the updated system offered by Montreal Protocol 3 and its companion Supplemental Compensation Plan, all American citizens, including those residing abroad, would be assured of recoveries for death or injury up to \$325,000 and unlimited medical and hospital benefits, when traveling to and from, or between any nations which ratify the Protocol. Under the system currently applicable to international travelers, U.S. citizens are entitled to recoveries of up to \$75,000, in most cases, for death or injury suffered on flight to, from, or stopping in the United States. To receive more, the Warsaw Convention requires proof of international wrongdoing ("willful misconduct"). And, on most flights elsewhere in the world, the limits applicable to our citizens today would be either \$10,000 or \$20,000, depending upon whether the original 1929 Warsaw Convention or 1955 amendments to it (The Hague Protocol) are applicable.

As to the liability regime if the United States denounced the Warsaw Convention, U.S. citizens would presumably be entitled to unlimited liability in U.S. courts for death or injury on flights to, from, or stopping in this country, after having proven that the carrier was negligent. For deaths or injuries suffered on flights elsewhere in the world, a limit of \$10,000 or \$20,000 would apply if the Warsaw Convention or The Hague Protocol remained in force between the countries involved. Some cases that would be covered by Protocol 3 if the U.S. ratifies (a domestic flight in another country connecting to an international flight) would be governed purely by foreign local laws and standards if the U.S. denounced the Warsaw Convention.

2. SIZE OF RECOVERIES

Our review of the facts regarding U.S. airline settlements and verdicts to date from recent domestic and international accidents reveals that 86.3% of the airline settlements have fallen below \$325,000, the maximum level of recovery provided by Protocol 3 and the proposed Supplemental Compensation Plan. The six major accidents covered by these data are: (a) TWA near Dulles Airport, (b) Southern near Atlanta, (c) Pan Am at Tenerife, (d) PSA at San Diego, (e) American's DC-10 at Chicago, and (f) Western at Mexico City.

Of the 874 settlements and verdicts thus far reached in these cases, 65.3% fell below \$100,000, 12.6% were between \$100,000 and \$200,000, 8.4% were between \$200,000 and \$325,000 and 13.7% were above \$325,000.

3. LENGTH AND COSTS OF LITIGATION

The most recent accident for which such data are available, the American DC-10 crash at Chicago, reaffirms earlier analyses regarding the extreme delays and costs of recoveries under the present system. In the first six months after that crash, only 4.6 percent (12) of the 258 cases were settled. Only 51 cases, or 19.8 percent of the total, were settled in the first year. Another 19.8 percent (51 cases) were settled in the third year. Thus, three years after the crash, 42.6 percent of the cases (110) remain unsettled. At the current rate of 49 settlements per year, it will be between five and six years after the crash before the last victim has been compensated.

As to the cost of this particular litigation, some plaintiff lawyer fees were so high that a presiding senior federal judge was moved to call them "excessive" and "seriously out of line", "gouging" and "a good shafting", in reacting to fees estimated as high as \$10,000 to \$15,000 per hour of actual work. One widow paid her attorneys \$383,244 for their help in obtaining an award of \$397,000 for herself and \$357,000 for her two infant children. Another widow paid her attorney \$172,000 for negotiating a settlement leaving the widow \$278,000, and \$33,000 for each of her three children, ranging in age from 12 to 15. In a third case, the lawyer received \$83,333 for negotiating a \$250,000 settlement, of which the widow received \$129,168 and each of three children, aged between 19 and 24, received \$12,500. In a fourth case, the law firm received a \$94,434 fee for negotiating a \$450,000 settlement, with the widow receiving \$240,000 and her two children, 14 and 18, each receiving \$55,000.

The record developed by the Foreign Relations Committee in the course of hearings on the Protocols contains an exhaustive and instructive document on the length and cost of aircraft accident litigation under the present system, in the form of presiding Judge Peirson M. Hall's report on the litigation of the Turkish Airlines' DC-10 crash at Paris on March 3, 1974. Damages for the 340 deaths in that crash were litigated in 211 cases. Even with the Court moving the parties to settlement by a "rigid course of discovery", only one case (of 211) had been settled at the end of the second year after the crash. Four years after the crash, six cases remained unresolved. A sampling of cases from Judge Hall's report in the record of the Committee's hearing illustrates the unconscionable time and expenses inflicted on a victim or his heirs in obtaining an award: In Case No. 66, a man's parents received only \$39,333 from a \$60,000 settlement over three and one quarter years after the accident; in Case No. 144, a family of a wife, two daughters and a son received only \$325,125 from a settlement of \$425,000 over three years after the accident; in Case No. 39, a mother waited almost two and one-half years to receive \$60,000 from a settlement of \$87,500 for the death of her daughter.

4. COST OF SUPPLEMENTAL COMPENSATION PLAN

Standard trip insurance sold at airports offers \$200,000 compensation for death or injury for approximately \$6.50. This reflects a pay-out rate of roughly 10 percent—a figure undoubtedly heavily impacted by high airport rental rates. Under the Supplemental Compensation Plan previously approved by the Civil Aeronautics Board, the estimated pay-out rate is 93 percent and, unlike airport trip insurance, coverage of medical and hospital costs is unlimited. With regard to airline insurance costs, commissions alone generally range from 2 percent to 10 percent. Other portions of an airline's premium cover premium taxes, administrative expenses and claim overhead expenses. Further, U.S. carrier international insurance rates are higher than domestic rates, and foreign carrier rates are generally higher than U.S. carrier rates.

5. "STANDARD OF CARE" ISSUE

All leading aviation nations have air safety commissions, such as the Federal Aviation Administration, and expert Boards of Inquiry,

such as the National Transportation Safety Board, to adopt and enforce safety rules and to determine the cause of aviation accidents, with prevention of future accidents their principal objective.

In the specific case of the United States, airline operations are consistently monitored and safety violations are prosecuted by the Federal Aviation Administration and National Transportation Safety Board. Heavy fines can be levied, and severe cases can lead to the withholding or revocation of licenses and certificates. As to accidents, the NTSB meticulously reconstructs every U.S. airline accident in detail, and often participates with its foreign counterparts in the intense investigation of any foreign airline accident. Such close scrutiny has no dependence whatever on allegations of willful misconduct; it occurs for both domestic and international operations on an ongoing basis, before and after any accident. The primacy of this system over any other considerations in airline travel has led to an unprecedented safety record for air travel.

The major deterrence for the carrier itself, of course, is the catastrophic results of any airline accident. Willful wrongdoing puts it out of business. This is the absolute deterrent, not the risk that is liability will be unlimited for deliberate wrongful acts.

6. MONTREAL PROTOCOL NO. 4

Protocol No. 4 will be remembered in the history of international unification of transportation law as the first instrument ever to introduce a system of strict liability in the international transportation of cargo. Airlines will be held strictly liable for lost or damaged cargo, subject only to four limited defenses included out of recognition of the necessary involvement of persons other than airline employees in handling cargo, and of the inherent defects of certain categories of cargo.

Protocol No. 4 also makes a number of changes in the documentation requirements imposed by the terms of the original Warsaw Convention. Many of the detailed entries and procedures to be followed in receiving cargo, processing it through Customs and releasing it to the consignees, requirements that were useful in their day, are a barrier to adjusting airline cargo handling procedures to modern commercial practices made possible by use of computers and electronic transmissions.

The result of adherence to the requirements imposed by the currently applicable cargo provisions of the Conference is delay on both ends of the line. Delays of five days or more in delivering shipments to consignees occur, all too often, at some of the gateways of the world.

In addition, by replacing gold with the far more stable Special Drawing Rights (SDR's) as the monetary unit for quantifying treaty liability for loss, damage or delay of cargo shipments, Protocol No. 4 will reestablish fixed liability levels worldwide and avoid uncertainties surrounding awards in various jurisdictions. This feature of the Convention, revising the "gold clause", which has been seriously eroded in several countries since the wild fluctuations in the value of gold began in the mid-70's, is essential to the prudent calculation of insurance needs by airlines and shippers alike.

Failure to ratify Protocol No. 4 would represent failure to accommodate a nearly universally supported treaty to the realities and opportunities of modern procedures and technologies. It would perpetuate uncertainties regarding cargo liability and insurance needs for consignors, consignees and airlines. Failure to ratify Protocol No. 4 would constitute a clear disservice to the shippers and receivers of goods, to the airlines, and to international commerce. We know of no opposition to these modernized cargo rules.

If we can be of further assistance on explaining this important U.S. diplomatic initiative, please do not hesitate to call upon us.

With cordial regards,

Sincerely,

POWELL A. MOORE,
*Assistant Secretary for
Congressional Relations.*

ARTICLE-BY-ARTICLE ANALYSIS OF MONTREAL PROTOCOL No. 3

[Since Protocol No. 3 largely incorporates articles from the Guatemala City Protocol of 1971, this analysis includes the combined articles from both Protocols. Asterisks indicate the actual articles from the Montreal Protocol itself.]

CHAPTER I—AMENDMENTS TO THE CONVENTION

Article I

Article I simply specifies that Protocol 3 modifies the Warsaw Convention as that Convention is amended by The Hague Protocol and the Guatemala City Protocol.

Article II

This change eliminates language of the Convention which required delivery to passengers of a ticket containing information such as places of departure and destination and a notice of the limitation of liability. The amendment would permit the itinerary information be preserved by other means and would eliminate the provision permitting recoveries in excess of the limit for failure to deliver a ticket containing such information prior to embarkation. By eliminating that provision the Convention will permit greater flexibility in ticketing by the carriers, including introduction of computerized systems under development such as automatic credit card ticketing.

Article III

Article III makes the same changes as those made by Article II in the case of checked baggage, and for the same reasons.

Article IV

Several changes are made by this Article, i.e., (1) a change in the English text from use of the words "bodily injury" to the words "personal injury," (2) introduction of the "absolute liability" concept, (3) exclusion of all liability attributable to "the state of health of the passenger," and (4) revisions of the existing regime governing baggage.

The English text of this Protocol (Guatemala) uses the words "personal injury" rather than "bodily injury." However, the French

text (the text that prevails in cases of inconsistency) and the Spanish text continue to use the words of the Warsaw Convention, "lesion corporelle" and "lesion corporal." This article makes the carrier liable upon the "condition only" that "the event" causing the death or injury took place on-board the aircraft or in the course of embarking or disembarking, i.e., liable without regard to fault and without the defenses permitted by the Warsaw Convention. However, the carrier is not liable if death or injury resulted "solely" from the state of health of the passenger (e.g., heart attack shown to be unrelated to the flight).

The distinction between "checked baggage" and "objects carried by the passenger" is abolished and the carrier is liable without fault in both cases unless the damage to baggage resulted "solely" from "inherent defect, quality or vice of the baggage."

Article V

This article makes the carrier liable for destruction, or loss of or damage to cargo sustained if the damage occurred while the cargo was in charge of the carrier regardless of the place occurrence.

Article VI

Article VI changes Article 20 of the Warsaw Convention. It strikes the provision that gave the carrier a defense in death and injury cases if it proved "that he and his agent have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures." That provision is retained, however, in the limited case of carrier liability for delay of passengers and baggage. Since the Diplomatic Conference at Guatemala made no changes in the rules governing carriage of cargo, this defense was also retained in the case of "damage resulting from destruction, loss, damage or delay . . ." arising out of the carriage of cargo.

Article VII

This revision provides a uniform rule to govern contributory negligence rather than leaving it, as Article 21 of the Warsaw Convention does, to the court seized of the case, which may, "in accordance with the provisions of its own law, exonerate the carrier wholly or partially from his liability." The new language exonerates the carrier wholly or partially from "liability" to a passenger or person claiming through him to the extent that the negligent or wrongful act or omission (i.e., exploding a bomb while in flight) caused or contributed to the "damage." [As a result of the use of the words "liability" and "damage" in this amendment, it is unclear whether this article will be interpreted as reducing the degree of carrier liability or just the measure of recovery.]

Article II. [Article VIII of Guatemala]

The Guatemala Protocol made significant changes in Article 22 of the Warsaw Convention as amended by The Hague Protocol. Those changes greatly increased the limits for death and personal injury cases; clarified [in conjunction with Article 24] that the limit is unbreakable; deleted language from Article 22 permitting passengers and carriers to agree to a higher limit of liability; made specific provision for limits of liability for delay of passengers and for "destruction, loss, damage or delay of baggage;" dealt separately with the regime of ability and limit of liability in the case of cargo, retain-

ing the special declaration concept permitting agreements for higher limits in the case of cargo; and introduced a "settlement inducement" clause by permitting awards of costs, including a lawyers' fees to claimants which costs are excluded from calculations of the limits, when a carrier fails to make a settlement offer within six months of receipt of a claim at least equal to the compensation ultimately awarded.

The monetary unit in which all limits were expressed in the Warsaw Convention and The Hague and Guatemala Protocols is the gold franc which, based on past experience under Warsaw, had been converted into dollars by U.S. courts on the basis of the official value of gold. It was on that basis that the U.S. negotiated from the revisions of the limits established by Article 22. When it became clear that the U.S. Government intended to abolish an official price of gold it was feared that if the market value of gold were used as a means of converting into local currency, it would distort the limits which had been negotiated. As a result the treaty would probably not be ratified.

To head off this result, the Montreal Conference amended Article 22 to substitute the Special Drawing Rights of the International Monetary Fund for the gold franc. The Protocol makes provision for those High Contracting Parties who are not members of the IMF to calculate the conversion into their national currency in such manner as they determine.

The last unnumbered subparagraph of Paragraph 4 was used to permit those States whose law does not permit use of a mechanism similar to the SDR to participate in the updated treaty at increased limits of liability. [It will also facilitate participation by those States in Protocol 4 dealing with cargo.]

Thus: Paragraph 1(a) of this article limits carrier liability in the carriage of persons to 100,000 SDR's for aggregate claims and specifies that in cases where local law permits periodic payments, that the equivalent value not exceed the limit.

Paragraph 1(b) establishes a limit of 4150 SDR's for delay in the case of passengers.

Paragraph 1(c) establishes a limit of 1000 SDR's in the case of destruction, loss, damage or delay of baggage.

Paragraph 2(a) limits cargo liability to 17 SDR's per kilogram unless a special declaration is made and any required supplement has been paid. In that case the limitation becomes the declared amount.

Paragraph 2(b) specifies that only the weight of the package or packages concerned shall be taken into account in determining liability in case of loss, damage or delay of part of the cargo or objects contained in the cargo. If, however, the value of other packages covered by the same waybill is affected the total weight of such package or packages shall be taken into account determining liability.

Paragraph 3(a)(b)(c) sets forth the "settlement inducement" clause by empowering all courts of the High Contracting Parties to award costs, including lawyers' fees, which shall not be taken into account in applying the limits, if a carrier does not offer to settle within six months after receipt of a claim "in an amount at least equal to the compensation awarded within the applicable limit." This is

intended to give the carrier an incentive to settle cases within six months at peril of having these costs assessed in the court.

Paragraph 4 makes clear that the SDR's are the ones defined by the IMF specifies that conversion into national currencies are to be based on the value of the SDR on the date of judgment, and that in the case of parties who are members of the IMF that the calculations are to be made using the method applied by the IMF.

In the case of parties not members of the IMF the calculations are to be made in a method determined by that party. This provision was included to permit states that are not members of IMF to participate in Additional Protocol 3 updating the Convention.

Article IX

Paragraph 1 of this article continues for the carriage of cargo the existing rules of the original Warsaw Convention with virtually no changes in language.

Paragraph 2 dealing with passengers is substantially different. Under the Convention the limit could be exceeded upon a showing of gross negligence. This paragraph in conjunction with Article X makes it clear that the limit cannot be exceeded. It is explicit that the limits cannot be exceeded "whatever the circumstances which give rise to the liability." It also makes clear that actions for damages whether founded on the "Convention, or in contract or in tort or otherwise" can only be brought subject to the conditions and limits set out in the Convention.

Article X

This article amends Article 25 of the Convention to eliminate the provision permitting the limits to be exceeded in the case of passengers. That provision is continued, however, in the case of the carriage of cargo since no substantive change was made in the cargo regime.

Article XI

This change is a further effort to assure that the limit not be exceeded. It gives the protection of the limits to servants and agents of carriers acting within the scope of employment. This is accomplished by removing the old provision voiding the limit in the case of gross negligence in the case of the carriage of passengers. Thus the article eliminates the chance that a carrier may ultimately have to make payments in excess of the limit as a result of indemnification clauses in employee contracts. In the case of the carriage of cargo the old provision is retained since no substantive changes were made in that regime.

Article XII

This amendment adds to Article 28 of the Warsaw Convention another jurisdiction in which passenger and baggage claims may be brought. Such claims may be brought in the territory of one of the Contracting Parties before a court within which the carrier has an "establishment" in cases in which the passenger has his domicile or permanent residence in the territory of the same Contracting Party. This enlarges the opportunity for American citizens to bring the action in an American court. It is the first occasion on which the English text has used the word "establishment" rather than the words "place of business" which are still used in the unamended text of Article 28. The

fact that the French text uses the words "un établissement" in all sections suggests that the same sort of carrier presence in the jurisdiction is contemplated in both cases, notwithstanding the new language in the English text.

Article XIII

The article is new to the Convention. Whether or not it is necessary for its purposes, this article provides that no provision in the Convention, presumably the absolute liability provision, prejudices the right of recourse of a person liable under the Convention against any other persons.

Article XIV

This amendment adds Article 35A to the Convention. It is an entirely new article expressly recognizing the right of a contracting state to operate within its territory a supplemental compensation system. This article specifies that a supplemental compensation system not imposed added liability or financial or administrative burdens on the carriers. It also makes clear that such a system must not give rise to discrimination between carriers and requires that the benefits under the system be extended to passengers without regard to the carrier involved. Finally the article makes clear that any passenger, or person claiming through him, who has contributed to the system is entitled to its benefits. This is a very important article added at the behest of the United States to facilitate a plan for supplemental compensation within its territory.

Article III [Article XV of Guatemala]

The Guatemala Protocol added Article 42 to the Convention. That article provides for convening Diplomatic Conferences of the Parties to Guatemala Protocol during the fifth and tenth years after the Protocol comes into effect to review the limits of death and injury of passengers set forth in Article 22, Paragraph 1(a) of that Protocol. It further provides that any increases in the limit in force on the date of such expenses not exceed one hundred eighty-seven thousand five hundred francs (\$12,500.00 at the time of the Guatemala Conference). Under this article the respective increases up to the specified maximum will become effective unless, before December 31 of the fifth and tenth years, the Conference by a two-thirds majority of the parties present and voting decides otherwise. Article 42 of the Guatemala Protocol further provides that the applicable limit in passenger death and injury cases shall be the one in effect on the date of the event causing the death or injury. In short, this article provides for an increase of the limit by approximately \$25,000 in two steps unless otherwise decided by the Diplomatic Conference.

Additional Protocol 3 merely changes the monetary units of the contemplated increases from the specified franc to the SDR.

CHAPTER II—SCOPE OF APPLICATIONS OF THE CONVENTION, AS AMENDED

Article IV

This article does not amend the amended article of Warsaw. It uses the identical standard of Article 1 of the original convention in determining specifically the "international coverage" to which the

Guatemala Protocol and Additional Protocol 3 apply. It is included in both Protocols to avoid uncertainty since, at least initially, there will be some divergence between those countries signing the Protocols and those who are parties to the original Warsaw Convention as amended by The Hague Protocol.

CHAPTER III—FINAL CLAUSES

Articles V through XIV, the so-called "final clauses" are not amendments to the Warsaw Convention. They set forth such things as who may sign, the effect of ratification, entry into force, method of accession, denunciation and the nature of reservations; the proper reference to the Protocol; how long it remains open for signature and who may sign; effect of ratification by States which are not parties to the Warsaw Convention as amended by any of the preceding Protocols.

Article V provides that the treaty will be known as the Warsaw Convention as amended at The Hague, 1955, at Guatemala City, 1971, and by the Additional Protocol No. 3 of Montreal, 1975, and that it be read and interpreted as a single instrument.

Article VI opens the Protocol for signature by any State until the Protocol comes into force.

Article VII specifies that: the Protocol shall be subject by ratification by the signatory parties; ratification by States not a party to the Warsaw Convention or any of the preceding Protocols shall have the effect of accession to Convention described in Article V; and instruments of ratification are to be deposited with the Government of the Polish People's Republic.

Article VIII specifies that the Protocol shall come into force ninety days after the deposit of the thirtieth ratification and that, when it does, it is to be registered with the United Nations by the Polish Government. This is a change from Article XX of the Guatemala Protocol which, in addition to thirty ratifications required to bring it into effect, contained the further condition that the five ICAO member states whose airlines had at least 40 percent of the total international scheduled traffic in 1970 must be among the thirty ratifying states. This condition would have prevented the Protocol from coming into effect unless ratified by the U.S.

Article IX states that, after coming into force, the Protocol will be open for accession by any non-signatory State and that accession by a State which is not a party to the Warsaw Convention or any of the Protocols to it shall have the effect of accession to the Convention as amended by each of the Protocols—i.e., they will become parties to the updated treaty. Accession will be effective on the ninetieth day following deposit of the instrument of accession with the Polish Government.

Article X provides for denunciation of Protocol 3 effective six months after receipt of notification by the Polish Government. It further specifies that, as between the parties to the Protocol, denunciation by any of them of the Warsaw Convention, The Hague Protocol and the Guatemala Protocol shall not be construed as denunciation of the updated treaty—i.e., the Warsaw Convention as amended at The Hague, 1955, at Guatemala City, 1971, and by Additional Protocol

No. 3 of Montreal, 1975. [This provision is in keeping with the belief of the United States that the best way to achieve universality swiftly would be denunciation of the Warsaw Convention by the United States.]

Article XI deals with reservations to the Protocol. It permits the following: a reservation to Article 22(3), the provision dealing with costs and lawyers' fees, by States whose courts under its laws are not permitted to award such costs; a reservation by any State for carriage by its military authorities who have reserved the whole capacity of an aircraft registered in that state; and a reservation to the updated treaty insofar as the carriage of cargo, mail and postal packages are concerned. Any of these reservations may be withdrawn at any time by notification of the Polish Government.

Article XII provides for prompt notification of parties to the Convention, or amended Convention, as well as the signatory or acceding States to Additional Protocol No. 3 and ICAO of the date of signature; deposit of instruments of ratification or accession; and the effective date of the Protocol and other relevant information.

Article XIII merely provides that reference to the Warsaw Convention in the Guadalajara Convention shall be to the updated Convention in cases where Guadalajara is governed by Protocol No. 3.

Article XIV left the Protocol open for signature at ICAO [until January 1, 1976] until it comes into force and requires ICAO promptly to notify the Polish Government of any signature and the date thereof while the Protocol is open for signature at ICAO.

[For an article-by-article description of Montreal Protocol No. 4, see the appendix to this report for a consolidated text of the Warsaw Convention as it would be amended. Treaty articles from Protocol No. 4 are designated as such throughout.]

ENTRY INTO FORCE

In accordance with Article VIII of Protocol No. 3 and Article XVIII of Protocol No. 4, each Protocol will come into force on the ninetieth day following the deposit of the thirtieth instrument of ratification.

TEXT OF THE RESOLUTION OF RATIFICATION

Resolved, (two-thirds of the Senators present concurring therein,) That the Senate advise and consent to the ratification of Additional Protocol No. 3 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 12, 1929, as Amended by the Protocols done at the Hague, on September 28, 1955, and at Guatemala City, March 8, 1971 (hereinafter, Montreal Protocol No. 3); and Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 12, 1929 as Amended by the Protocol done at The Hague on September 8, 1955 (hereinafter Montreal Protocol No. 4), provided that:

(1) the President shall not deposit the instruments of ratification for the United States until he has determined that a satisfactory supplemental compensation plan, as reviewed and approved by the Civil

Aeronautics Board or its appropriate successor, will be in operation for the United States; and

(2) the President shall give notice of denunciation of these Protocols by the United States if, at any time after their entry into force for the United States, he determines that a satisfactory supplemental compensation plan, as periodically reviewed by the Civil Aeronautics Board in light of new economic or other relevant circumstances, is not in operation for the United States, or that the best interests of U.S. airline passengers are not otherwise served by continued adherence to these Protocols by the United States; and

(3) the United States government shall continue actively to seek to negotiate higher limits on the liability of carriers than those provided under these Protocols.

APPENDIX

(Excerpt from the Report of the United States Delegation to the 1975 Montreal Conference)

THE PROVISIONS OF THE REVISED WARSAW CONVENTION APPLICABLE TO THE UNITED STATES IN THE EVENT OF RATIFICATION OF MONTREAL PROTOCOLS 3 AND 4 AND TERMINATION OF THE 1929 VERSION OF THE CONVENTION

Explanatory Note

If the Senate gives its advice and consent to ratification of Montreal Protocols 3 and 4, the intended procedure would be to wait approximately 3 months before depositing instruments of ratification. At the time of deposit, the United States would also denounce the Warsaw Convention in accordance with Article 39 thereof, and make the declarations referred to in Article XI, paragraph 1(c) of Protocol 3 and in Article XXI, paragraph 1(b) of Protocol 4. The effect of the denunciation and declarations would be that only the most modern versions of the provisions of the Warsaw Convention and its Protocols would be applicable to the United States. Denunciation of the Warsaw Convention takes effect six months after notification. The purpose of waiting 3 months before ratifying Protocols 3 and 4 would be to inform other Contracting Parties of the steps the United States intends to take and to permit them a total of approximately 9 months to complete their internal procedures if they wish to be party with the United States to a single set of the modern rules.

The substantive provisions of the revised Warsaw Convention applicable to the United States upon completion of the steps described in the Explanatory Note follow below.¹

CHAPTER I.—SCOPE—DEFINITIONS

Article 1

1. This Convention shall apply to all international transportation of persons, baggage or goods performed by aircraft for hire. It shall apply equally to gratuitous transportation by aircraft performed by an air transportation enterprise). (W—Art. 1)

2. For the purposes of this Convention, the expression international carriage means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contract-

¹ Material in brackets [] has been added for editorial purposes in a few places to assist in understanding the text. Lined-through language (the) would not be applicable to the United States but is found in articles containing provisions that would be applicable to the United States. Margin notes give the source of the provision (W=Warsaw Convention; H=Hague Protocol; G=Guatemala City Protocol; M3=Montreal Protocol 3; M4=Montreal Protocol 4).

ing Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention. (H—Art. I)

3. Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State. (H—Art. I)

Article 2

1. This Convention shall apply to transportation performed by the State or by legal entities constituted under public law provided it falls within the conditions laid down in Article 1. (W—Art. 2)

2. In the carriage of postal items the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations. (M4—Art. II)

3. Except as provided in paragraph 2 of this Article, the provisions of this Convention shall not apply to the carriage of postal items. (M4—Art. II)

CHAPTER II. TRANSPORTATION DOCUMENTS

SECTION I.—PASSENGER TICKET

Article 3

1. In respect of the carriage of passengers an individual or collective document of carriage shall be delivered containing:

- a) an indication of the places of departure and destination;
- b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which would preserve a record of the information indicated in a) and b) of the foregoing paragraph may be substituted for the delivery of the document referred to in that paragraph.

3. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability. (G—Art. II)

SECTION II.—BAGGAGE CHECK

Article 4

1. In respect of the carriage of checked baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a document of carriage which complies with the provisions of Article 3, paragraph 1, shall contain:

- a) an indication of the places of departure and destination;

b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which would preserve a record of the information indicated in a) and b) of the foregoing paragraph may be substituted for the delivery of the baggage check referred to in that paragraph. (G—Art. III)

3. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, none the less, be subject to the rules of this Convention including those relating to limitation of liability. (G—Art. III)

SECTION III.—DOCUMENTATION RELATING TO CARGO

Article 5

1. In respect of the carriage of cargo an air waybill shall be delivered.

2. Any other means which would preserve a record of the carriage to be performed may, with the consent of the consignor, be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a receipt for the cargo permitting identification of the consignment and access to the information contained in the record preserved by such other means.

3. The impossibility of using, at points of transit and destination, referred to in paragraph 2 of this Article does not entitle the carrier the other means which would preserve the record of the carriage to refuse to accept the cargo for carriage. (M4—Art. III)

Article 6

1. The air waybill shall be made out by the consignor in three original parts.

2. The first part shall be marked "for the carrier"; it shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

3. The signature of the carrier and that of the consignor may be printed or stamped.

4. If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor. (M4—Art. III)

Article 7

When there is more than one package:

a) the carrier of cargo has the right to require the consignor to make out separate air waybills;

b) the consignor has the right to require the carrier to deliver separate receipts when the other means referred to in paragraph 2 of Article 5 are used. (M4—Art. III)

Article 8

a) an indication of the places of departure and destination;

b) if the places of departure and destination are within the ter-

ritory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place; and

c) an indication of the weight of the consignment. (M4—Art. III)

Article 9

Non-compliance with the provisions of Article 5 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, none the less, be subject to the rules of this Convention including those relating to limitation of liability. (M4—Art. III)

Article 10

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by him or on his behalf in the air waybill or furnished by him or on his behalf to the carrier for insertion in the receipt for the cargo or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 5.

2. The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on his behalf.

3. Subject to the provisions of paragraphs 1 and 2 of this Article, the carrier shall indemnify the consignor against all damage suffered by him, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on his behalf in the receipt for the cargo or in the record preserved by the other means referred to in paragraph 2 of Article 5. (M4—Art. III)

Article 11

1. The air waybill or the receipt for the cargo is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

2. Any statements in the air waybill or the receipt for the cargo relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the cargo. (M4—Art. III)

Article 12

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

3. If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the receipt for the cargo delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the receipt for the cargo.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition. (M4—Art. III)

Article 13

1. Except when the consignor has exercised his right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage.

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage. (M4—Art. III)

Article 14

The consignor and the consignee can respectively enforce all the rights given them by Articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract of carriage. (M4—Art. III)

Article 15

1. Articles 12, 13, and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the receipt for the cargo. (M4—Art. III)

Article 16

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, octroi or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, his servants or agents.

2. The carrier is under no obligation to inquire into the correctness of sufficiency of such information or documents. (M4—Art. III)

CHAPTER III. LIBRARY OF THE CARRIER

Article 17

1. The carrier is liable for damage sustained in case of death or personal injury of a passenger upon condition only that the event which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking. However, the carrier is not liable if the death or injury resulted solely from the state of health of the passenger.

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or in the course of any of the operations of embarking or disembarking or during any period within which the baggage was in charge of the carrier. However, the carrier is not liable if the damage resulted solely from the inherent defect, quality or vice of the baggage.

3. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and objects carried by the passenger. (G-Art. IV)

Article 18

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, any registered baggage, if the occurrence which caused the damage so sustained took place during the carriage by air.¹

2. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the occurrence which caused the damage so sustained took place during the carriage by air.

3. However, the carrier is not liable if he proves that the destruction, loss of, or damage to, the cargo resulted solely from one or more of the following:

- a) inherent defect, quality or vice of that cargo;
- b) defective packing of that cargo performed by a person other than the carrier or his servants or agents;
- c) an act of war or an armed conflict;
- d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

4. The carriage by air within the meaning of the preceding paragraphs of this Article comprises the period during which the baggage or ² cargo is in the charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.

5. The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment,

¹ This provision appears in Montreal Protocol 4; it would not apply to the carriage of baggage because of the reservation to be made by the United States under Article XXI, paragraph 1(b) of that Protocol.

² This provision appears in Montreal Protocol 4; it would not apply to the carriage of baggage because of the reservation to be made by the United States under Article XXI, with paragraph 1(b) of that Protocol.

any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air. (M4—Art. IV)

Article 19

The carrier shall be liable for damage occasioned by delay in the transportation by air of passengers, baggage or goods. (W—Art. 19)

Article 20

1. In the carriage of passengers and baggage the carrier shall not be liable for damage occasioned by delay if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures. (G—Art. VI)

[2.] In the carriage of passengers and baggage, and in³ the case of damage occasioned by delay in the carriage of cargo, the carrier shall not be liable if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures. (M4—Art. V)

Article 21

[1. In the carriage of passengers and baggage:]⁴ If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, the carrier shall be wholly or partly exonerated from his liability to such person to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of the death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from his liability to the extent that he proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. (G—Art. VII)

2. In the carriage of cargo, if the carrier proves that the damage was caused by or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he derives his rights, the carrier shall be wholly or partly exonerated from his liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. (M4—Art. VI)

Article 22⁵

1. (a) In the carriage of persons the liability of the carrier is limited to the sum of 100,000 Special Drawing Rights for the aggregate of the claims, however founded, in respect to damage suffered as a result of the death or personal injury of each passenger. Where, in accordance with the law of the court seised of the case, damages may

³ This provision appears in Montreal Protocol 4; it would not apply to the carriage of passengers and baggage because of the reservation to be made by the United States under Article XXI, paragraph 1(b) of that Protocol.

⁴ This paragraph, found in Article VII of the Guatemala City Protocol and incorporated by reference in Montreal Protocol 3, applies only to the carriage of passengers and baggage because of the reservation to be made by the United States under Article XI, paragraph 1(c) of Protocol 3.

⁵ This version of Article 22 appears in Montreal Protocol 3; it would not apply to the carriage of cargo because of the reservation to be made by the United States under Article XI, paragraph 1(c) of that Protocol.

be awarded in the form of periodic payments, the equivalent capital value of the said payments shall not exceed 100,000 Special Drawing Rights.

b) In the case of delay in the carriage of persons the liability of the carrier for each passenger is limited to 4,150 Special Drawing Rights.

c) In the carriage of baggage the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1,000 Special Drawing Rights for each passenger.

2. (a) In the carriage of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the consignor's actual interest in delivery at destination.

(b) In the case of loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

3. (a) The courts of the High Contracting Parties which are not authorized under their law to award the costs of the action, including lawyers' fees, shall, in actions to which this Convention applies, have the power to award, in their discretion, to the claimant the whole or part of the costs of the action, including lawyers' fees which the court consider reasonable.

(b) The costs of the action including lawyers' fees shall be awarded in accordance with subparagraph (a) only if the claimant gives a written notice to the carrier of the amount claimed including the particulars of the calculation of that amount and the carrier does not make, within a period of six months after his receipt of such notice, a written offer of settlement in an amount at least equal to the compensation awarded within the applicable limit. This period will be extended until the time of commencement of the action if that is later.

(c) The costs of the action including lawyers' fees shall not be taken into account in applying the limits under this Article.

4. The sums mentioned in terms of Special Drawing Right in this Article and Article 42 shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect

at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraphs 1 and 2(a) of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of 1,500,000 monetary units per passenger with respect to paragraph 1(a) of Article 22; 62,500 monetary units per passenger with respect to paragraph 1(b) of Article 22; 15,000 monetary units per passenger with respect to paragraph 1(c) of Article 22; and 250 monetary units per kilogramme with respect to paragraph 2(a) of Article 22. A State applying the provisions of this paragraph may also declare that the sum referred to in paragraphs 2 and 3 of Article 42 shall be the sum of 187,500 monetary units. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned. (M3—Art. II)

Article 22[bis] ^a

2. b) In the carriage of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the consignor's actual interest in delivery at destination. (M4—Art. VII)

c) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggages or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability. (H—Art. XI, designated as para. (2) (c) by M4—Art. VII)

4. The limits prescribed in this article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other

^a These provisions of Article 22, resulting from Montreal Protocol 4, apply to the carriage of cargo; they apply only to the carriage of cargo because of the reservation to be made by the United States under Article XXI, paragraph 1(b) of that Protocol.

expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later. (H—Art. XI)

6. The sums mentioned in terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party. (M4—Art. VII)

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 2(b) of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of two hundred and fifty monetary units per kilogramme. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. This sum may be converted into the national currency concerned in round figures. The conversion of this sum into the national currency shall be made according to the law of the State concerned. (M4—Art. VII)

Article 23

1. Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this convention shall be null and void, but the nullity of any such provision shall not involve the nullity of the whole contract, which shall remain subject to the provisions of this convention. (W—Art. 23, designated as para. 1 by H—Art. III)

2. Paragraph 1 of this Article shall not apply to provisions governing loss or damage resulting from the inherent defects, quality or view of this cargo carried. (H—Art. XII)

Article 24

1. In the carriage of passengers and baggage any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and limits of liability set out in the Convention, without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. Such limits of liability constitute maximum limits and may not be exceeded whatever the circumstances which gave rise to the liability. (G—Art. IX; the provision appears in G—Art. IX as Art. 24, para. 2.)

2. In the carriage of cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or

otherwise, can only be brought subject to the conditions and limits of liability set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. Such limits of liability constitute maximum limits and may not be exceeded whatever the circumstances which gave rise to the liability. (M4—Art. VIII)

Article 25¹

(G—Art. X and M4—Art. IX)

Article 25A

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if he proves that he acted within the scope of this employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under this Convention. (G—Art. XI)

2. The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits. (H—Art. XIV)

Article 26

1. Receipt by the person entitled to the delivery of baggage or goods without complaint shall be *prima facie* evidence that the same have been delivered in good condition and in accordance with the document of transportation. (W—Art. 26)

2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal. (H—Art. XV)

3. Every complaint must be made in writing upon the document of transportation or by separate notice in writing dispatched within the times aforesaid. (W—Art. 26)

4. Failing complaint within the times, aforesaid, no action shall be against the carrier, save in the case of fraud on his part. (W—Art. 26)

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this convention against those legally representing his estate. (W—Art. 27)

Article 28

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination. (W—Art. 28)

¹ This article would not be applicable to the United States because of the reservation to be made under Article XI, paragraph 1(c) of Montreal Protocol 3 and Article XXI, paragraph 1(b) of Montreal Protocol 4.

2. In respect of damage resulting from the death, injury, or delay of a passenger or the destruction, loss, damage or delay of baggage, the action may be brought before one of the Courts mentioned in paragraph 1 of this Article, or in the territory of one of the High Contracting Parties, before the Court within the jurisdiction of which the carrier has an established if the passenger has his domicile or permanent residence in the territory of the same High Contracting Party. (G—Art. XII)

3. Questions of procedure shall be governed by the law of the court to which the case is submitted. (W—Art. 28, designated as para. 3 by G—Art. XII)

Article 29

1. The right to damages shall be extinguished if an action is not brought within 2 years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the transportation stopped.

2. The method of calculating the period of limitation shall be determined by the law of the court to which the case is submitted. (W—Art. 29)

Article 30

1. In the case of transportation to be performed by various successive carriers and falling within the definition set out in the third paragraph of article 1, each carrier who accepts passengers, baggage or goods shall be subject to the rules set out in this convention, and shall be deemed to be one of the contracting parties to the contract of transportation insofar as the contract deals with that part of the transportation which is performed under his supervision.

2. In the case of transportation of this nature, the passenger or his representative can take action only against the carrier who performed the transportation during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards baggage or goods, the passenger or consignor shall have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery shall have a right of action against the last carrier, and further, each may take action against the carrier who performed the transportation during which the destruction, loss, damage, or delay took place. These carriers shall be jointly and severally liable to the passenger or to the consignor or consignee. (W—Art. 30)

Article 30A

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person. (G—Art. XIII and M4—Art. XI)

CHAPTER IV. PROVISIONS RELATING TO COMBINED TRANSPORTATION

Article 31

1. In the case of combined transportation performed partly by air and partly by any other mode of transportation, the provisions of this

convention shall apply only to the transportation by air, provided that the transportation by air falls within the terms of article 1.

2. Nothing in this convention shall prevent the parties in the case of combined transportation from inserting in the document of air transportation conditions relating to other modes of transportation, provided that the provisions of this convention are observed as regards the transportation by air. (W—Art. 31)

CHAPTER V. GENERAL AND FINAL PROVISIONS

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the transportation of goods arbitration clauses shall be allowed, subject to this convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of article 28. (W—Art. 32)

Article 33

Except as provided in paragraph 3 of Article 5, nothing in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage or from making regulations which do not conflict with the provisions of this Convention. (W—Art. 33 and M4—Art. XII)

Article 34

The provisions of Articles 3 to 8 inclusive relating to documents of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business. (H—Art. XVI and M4—Art. XIII)

Article 35

The expression "days" when used in this convention means current days, not working days. (W—Art. 35)

Article 35A

No provision contained in this Convention shall prevent a State from establishing and operating within its territory a system to supplement the compensation payable to claimants under the Convention in respect of death, or personal injury of passengers. Such a system shall fulfill the following conditions:

a) It shall not in any circumstances impose upon the carrier, his servants or agents, any liability in addition to that provided under this Convention;

b) it shall not impose upon the carrier any financial or administrative burden other than collecting in that State contributions from passengers if required to do so;

c) it shall not give rise to any discrimination between carriers with regard to the passengers concerned and the benefits available to the said passengers under the system shall be extended to them regardless of the carrier whose services they have used;

b) if a passenger has contributed to the system, any person suffering damage as a consequence of death or personal injury of such passenger shall be entitled to the benefits of the system. (G—Art. XIV)

*Articles 36-40 **

(W—Art. 41)

Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this convention to call for the assembling of a new international conference in order to consider any improvements which may be made in this convention. To this end it will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such conference.

Article 42

1. Without prejudice to the provisions of Article 41, Conferences of the Parties to the Protocol done at Guatemala City on the eighth of March 1971 shall be convened during the fifth and tenth years respectively after the date of entry into force of the said Protocol for the purpose of reviewing the limit established in Article 22, paragraph 1(a) of the Convention as amended by that Protocol. (G—Art. XV)

2. At each of the Conferences mentioned in paragraph 1 of this Article the limit of liability in Article 22, paragraph 1(a) in force at the respective dates of these Conferences shall not be increased by an amount exceeding 12,500 Special Drawing Rights. (M3—Art. III)

3. Subject to paragraph 2 of this Article, unless before the thirty-first December of the fifth and tenth year after the date of entry into force of the Protocol referred to in paragraph 1 of this Article the aforesaid Conferences decide otherwise by a two-thirds majority vote of the Parties present and voting, the limit of liability in Article 22, paragraph 1(a) in force at the respective dates of these Conferences shall on those dates be increased by 12,500 Special Drawing Rights. (M3—Art. III)

4. The applicable limit shall be that which, in accordance with the preceding paragraphs, is in effect on the date of the event which caused the death or personal injury of the passenger. (G—Art. XV)

SCOPE OF APPLICATION OF THE CONVENTION AS AMENDED

The Warsaw Convention as amended at The Hague in 1955, and at Guatemala City in 1971 and by this Protocol⁹ shall apply to international carriage as defined in Article 1 of the Convention provided that the places of departure and destination referred to in that Article are situated either in the territories of two Parties to this Protocol or

⁸ The final clauses of the Warsaw Convention (Articles 36-40) would no longer apply to the United States following denunciation of the Warsaw Convention. The applicable final clauses are in Montreal Protocol 3, with respect to the carriage of passengers and baggage, and Montreal Protocol 4, with respect to the carriage of cargo.

⁹ Montreal Protocol 3, which applies only to the carriage of passengers and baggage because of the reservation to be made by the United States under Article X, paragraph 1(c) of that Protocol.

within the territory of a single Party to this Protocol with an agreed stopping place in the territory of another State. (M3—Art. IV)

The Warsaw Convention as amended at The Hague in 1955 and by this Protocol¹⁰ shall apply to international carriage as defined in Article 1 of the Convention, provided that the places of departure and destination referred to in that Article are situated either in the territories of two Parties to this Protocol or within the territory of a single Party to this Protocol with an agreed stopping place in the territory of another State. (M4. XIV)

Final Clauses Omitted.

ARTICLE-BY-ARTICLE ANALYSIS

ARTICLE 1

Article 1 defines the international air carriage to which the Warsaw Convention applies. The new text substitutes the words "international carriage" for "international transportation" and the phrase "agreement between the parties" for "contract made by the parties."

ARTICLE 2

Article 2(1) is unchanged.

The new text of Article 2(2) brings carriage by air of postal items within the scope of the Convention, but restricts carrier liability to claims by postal authorities. The Convention of the Universal Postal Union governs the liability of postal authorities to individuals making use of the mails.

ARTICLE 3

The new provisions of Article 3 made it possible for airlines to adopt efficient, modern passenger ticketing procedures. Paragraph 1 substantially reduces the complexity of passenger tickets, requiring recordation of only the information necessary to give notice that the carriage comes within the scope of the Convention (as defined in Article 1). Paragraph 2 allows the air carriers to substitute computer retention of the required information for actual delivery of a written ticket.

Fully automated ticketing is now technologically possible. A passenger whose reservation has been computer-recorded could check his baggage at the curb and obtain his ticket from an airport computer terminal simply by inserting a credit card. In the future, a passenger could board the aircraft, without waiting for anyone to examine his ticket, by inserting the computer ticket into a device at the gate. Ultimate development of such a system is made possible by the new provision in Article 3.

Paragraph 3 has been revised so that non-delivery of the ticket does not allow recovery against the air carrier in excess of the limitation of liability. This is a necessary consequence of the new system in which a ticket is not required.

¹⁰ Montreal Protocol 4, which applies only to the carriage of cargo because of the reservation to be made by the United States under Article XXI, paragraph 1(b) of that Protocol.

ARTICLE 4

The revised provisions on baggage documentation in Article 4 parallel the new ticketing rules in Article 3. Paragraph 1 substantially reduces the number of entries required on each baggage check. Paragraph 2 allows substitution of computer retention of these entries for actual delivery of a baggage check. Paragraph 3, like the corresponding provision on passenger tickets, is a consequence of elimination of the requirement for a printed baggage check.

These changes clear the way for more efficient check-in procedures. Eliminating the need to record the weight of each piece of baggage, for example, permits passengers on international flights to check their baggage at the curb just as passengers on U.S. domestic flights have been able to do for the past ten years.

ARTICLE 5

Amendments to Articles 5-16 improve and update the rules on cargo documentation and carriage.

Paragraph 1 of Article 5 repeats the Warsaw requirement that the shipper of cargo deliver an air waybill to the carrier. This document is described in articles which follow. Paragraph 2 allows an air carrier to substitute computer recordation of necessary cargo information for the air waybill, provided that the shipper consents. The shipper may then request from the carrier a receipt for the cargo which permits identification of the shipment and access to the carrier's computer records. These provisions will allow carriers to expand the electronic processing system which they already use for domestic cargo shipments. Paragraph 3 provides that the absence of electronic processing facilities at certain airports shall not entitle a carrier to refuse cargo shipments.

ARTICLE 6

The existing cargo documentation system will be simplified in certain important respects by new Article 6, the effect of which is to permit air shipments to commence even before documentation has been completed. The old requirement that the air waybill "be handed over with the goods" is specifically omitted from paragraph 1, and the old requirement that the document "shall accompany the goods" is likewise omitted from paragraph 2. In his final statement to the 1975 Montreal Conference, the United States delegate emphasized that it is no longer necessary for the air waybill physically to accompany the goods.

Although Article 6(2) still requires signatures on air waybills, Article 6(3) allows these signatures to be printed or stamped. This permits electronic recordation. The United States delegate to the 1975 Montreal Conference noted that the phrase "printed or stamped" in this treaty is equivalent to the phrase "in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by other mechanical or electronic means" relating to maritime bills of lading set out in the UNCITRAL draft Convention on Carriage of Goods by Sea (Article 15(1)(j)).

ARTICLE 7

The new material in Article 7(b) corresponds to the provisions for electronic recordation of cargo documentation of Article 5(2). Article 7 now provides for separate cargo receipts in those situations where separate air waybills could be required.

ARTICLE 8

New Article 8 simplifies cargo documentation in the same way that Articles 3 and 4 provide for less complicated passenger and baggage documentation procedures. Instead of the long list of particulars formerly required on an air waybill, Article 8 contemplates a brief waybill or cargo receipt which sets out only the weight of the consignment and the information necessary to give notice that the carriage comes within the scope of the Convention (as defined in Article 1).

ARTICLE 9

New Article 9 deletes language which did not allow a carrier to avail itself of the Convention's liability limit if the air waybill was not made out or the list of particulars was not completed as required by Article 8 in the original Convention. This change is a consequence of the amendments to Articles 5-8.

ARTICLE 10

Paragraphs 1 and 2 of new Article 10 restate the provisions of the old article in light of the revisions in Article 5. These paragraphs make the consignor of cargo responsible for the correctness of information which he furnishes for cargo documentation. They are revised in order to make it clear that the air waybill or the data for electronic recordation can be supplied on behalf of the consignor by some other party. The consignor is required to indemnify the carrier under paragraph 2 for damages arising from deficiencies in the information furnished by or on behalf of the consignor under paragraph 1.

An added provision, paragraph 3, requires the carrier to indemnify the consignor for deficiencies in the entries on cargo documents made by or on behalf of the carrier. This provision does not affect the consignor's responsibility to furnish complete and correct information to the carrier.

ARTICLE 11

Article 11(1) is amended to provide that cargo receipts as well as air waybills are prima facie evidence of the carrier's acceptance of the goods, the contract between the parties, and the conditions of carriage specified in the receipts or waybills. Article 11(2) is amended similarly to extend the evidentiary presumptions attached to certain statements in air waybills to the same statements in cargo receipts. Statements regarding the weight, dimensions, and packing of the cargo are prima facie evidence of those facts. Statements regarding the

quantity, volume, and condition of the cargo are not *prima facie* evidence unless they have been checked by the carrier in the shipper's presence and the air waybill or alternative cargo documentation authorized by Article 5 so states, or the conditions to which they relate are apparent.

ARTICLE 12

Paragraph 1 of Article 12 reserves to the shipper the power to withdraw or redirect the cargo shipment, subject to his obligations to the carrier and other consignors. This paragraph is basically unchanged. Paragraph 2 of the article, also unchanged, requires the carrier to notify the shipper promptly whenever execution of the instructions given under paragraph 1 is impossible.

Paragraph 3 is also basically unchanged, except for adding a reference to cargo receipts as a consequence of the changes made in Article 5(2). Paragraph 3 makes the carrier liable for damages to any person lawfully holding the shipper's part of the air waybill or cargo receipt, if the carrier obeys the shipper's instructions under paragraph 1 without requiring production of the shipper's document.

Paragraph 4 likewise contains only minor changes. This provision terminates the shipper's power under Article 12 at the moment when the consignee's rights under Article 13 commence. The shipper may retain control of the cargo, however, if the consignee either refuses delivery or cannot be found.

ARTICLE 13

This article defines the consignee's rights to receive cargo. Except for minor drafting changes, the article is unamended.

Article 13(1) provides that, subject to the shipper's power under Article 12, the consignee is entitled to delivery of the cargo on its arrival at the destination. The shipper will not be able to withdraw the cargo unless his instructions reach the carrier before the consignee takes delivery.

Paragraphs 2 and 3 require the carrier to notify the consignee promptly of the cargo arrival, unless it has been otherwise agreed. If the carrier admits loss of the cargo or if the cargo has not arrived within seven days of the date on which it ought to have arrived, the consignee may proceed to enforce his contractual rights against the carrier.

ARTICLE 14

This article is substantially unchanged. The clarifying phrase "of carriage" was added after the word "contract" in the last clause.

ARTICLE 15

Article 15(1), taken verbatim from the Warsaw Convention, declares that Articles 12, 13, and 14 do not affect the basic contractual relations between parties interested in a cargo shipment. Article 15(2) is amended to make the cargo receipt an alternative vehicle for varying the provisions of Articles 12, 13, and 14.

A paragraph added to this article by the 1955 Hague Protocol declared that nothing in the Convention prevented the use of negotiable air waybills. The 1975 Montreal Conference decided that such a provision was unnecessary and the paragraph was therefore not retained; nothing in the Convention prevents use of negotiable air waybills.

ARTICLE 16

The first paragraph of Article 16 obliges the shipper to provide the documents needed for customs, tax, or police procedures. The requirement that these documents accompany the cargo is deleted in order to accommodate the revisions in Article 6. A second paragraph absolves the carrier of any obligation to check the accuracy or sufficiency of Article 16 documentation. The carrier is not relieved of its responsibility with respect to the proper classification of cargo under its tariffs for rate purposes.

ARTICLE 17

Article 17 introduces no-fault liability into the Warsaw treaty system. Article 17 of the 1929 Convention declared the carrier liable for injury to passengers sustained during the carriage. Under Article 20 of the Convention, however, the carrier could avoid liability by proving either that it and its agents had taken the necessary measures to avoid injury or that it could not have taken such measures. In other words, the Warsaw Convention created only a rebuttable presumption of the carrier's liability; liability still depended on proof of fault.

Paragraph 1 of new Article 17 makes the carrier liable for the death or injury of a passenger upon condition only that the event which caused death or injury took place on board the aircraft or in the course of embarking or disembarking. Harm resulting entirely from the passenger's state of health is not included. (A comparative negligence provision in Article 21, discussed below, adds a logical qualification to Article 17). The words "personal injury" replace the phrase "wounding . . . or any other bodily injury" in order to clarify the modern meaning of the French text. See, e.g., *Krystal v. British Overseas Airways Co.*, 403 F. Supp. 1322 (C.D. Cal. 1975); *Husserl v. Swiss Air Transport Co.*, 388 F. Supp. 1238 (S.D.N.Y. 1975) (awarding damages for mental anguish alone).

Similarly, new paragraph 2 of Article 17 makes the carrier liable for destruction, loss, or damage to baggage unless the damage results entirely from some inherent defect, quality, or vice of the baggage.

Paragraph 3 largely eliminates the distinction between checked and unchecked baggage that existed in the Warsaw Convention, as do the liability provisions in revised Article 22.

ARTICLE 18

The provisions of Montreal Protocol 4 would apply to the United States only insofar as they relate to the carriage of cargo, because of the reservation made under Article XXI(1)(b) of Protocol 4. Since new Article 18 appears in Protocol 4, paragraph 1 relating to the carriage of baggage would not apply to the United States.

Paragraph 2 declares the carrier liable for destruction, loss, or damage to cargo occurring during the carriage by air, as defined in paragraphs 4 and 5. Paragraph 3 enumerates the carrier's possible defenses. The important word "solely" in this paragraph makes these defenses unavailable whenever the carrier or some other factor is partially the cause of the damage.

ARTICLE 19

Carriers continue to be liable for the results of delay. This provision is unchanged from the Warsaw Convention.

ARTICLE 20

Article 20 of the 1929 Convention made due care a defense to all claims against the carrier. The new article makes this defense available only against claims resulting from delay.

ARTICLE 21

Article 21 has been updated by replacing the contributory negligence defense of the 1929 Convention with a comparative negligence regime. Thus, a contribution by the claimant to the damage, death, or injury will not wholly exonerate the carrier. The responsibilities of the parties will be apportioned and compensation adjusted accordingly.

ARTICLE 22

New Article 22 dramatically increases the limits of carrier liability and restates the new limits in terms of the Special Drawing Right (SDR) of the International Monetary Fund (IMF). Both the increased limits and the conversion from a gold standard to the SDR are important innovations.

The amendments raise the carrier liability limit for passenger death or injury from about \$8300 per passenger (\$10,000 in devalued dollars) to 100,000 SDRs per passenger, about \$117,000 at present conversion rates. Carrier liability is limited to the stated sum "for the aggregate of the claims, however founded." This language, together with a related statement in Article 24, means that carriers would not be subject to multiple actions in different jurisdictions which might result in an aggregate liability per passenger in excess of 100,000 SDRs.

The limit of carrier liability for baggage is raised from \$20 per kilogram to 1000 SDRs per passenger (about \$1170 at present conversion rates). This change removes the need to weigh baggage and facilitates expedited check-in procedures. A provision distinguishing checked from unchecked baggage is deleted.

A new provision establishes a liability limit of 4150 SDRs (about \$4855 at present conversion rates) for the delay of a passenger.

The limit of liability for cargo is 17 SDRs per kilogram (about \$20 at present conversion rates), unless the shipper makes appropriate declarations of special value and pays any necessary supplementary fee at the time he delivers the cargo to the carrier. A new provision states that, unless damage to a portion of the cargo affects the value of

the whole shipment, the weight to be considered is that of the damaged packages.

Another important change in Article 22 is the addition of settlement inducement clauses. The clause which applies to passenger and baggage claims authorizes courts not already so empowered to award litigation costs, including lawyers' fees, to all claimants who do not receive an adequate settlement offer from the carrier within six months after notice of the claim or before suit is brought, if later. Such awards may be made without regard to the liability limits. The settlement inducement clause applicable to the cargo claims allows a court to award legal costs in accordance with the law of the jurisdiction and without regard to the limit of liability.

Special provisos in Article 22 allow nations which are not members of the IMF and whose law does not permit application of the SDR formula to opt for liability limits expressed in gold. These provisions allow certain nations not belonging to the 130-member IMF to become parties to the amended treaty.

ARTICLE 23

Paragraph 1, taken from the 1929 Convention, prohibits carriers from contracting to reduce their liability under the Convention. Under paragraph 2, however, carriers and shippers are permitted to make agreements which allocate responsibility for damage resulting from the inherent defect, quality, or vice of cargo.

Nothing in the Convention prohibits a carrier from making agreements, like the 1966 Montreal Agreement, which increase its liability.

ARTICLE 24

Article 24 is redrafted in order to make it clear that the liability limits set out in the amended Convention are unbreakable. It declares that all damage actions arising out of international air carriage governed by the Convention are subject to the conditions and limits of liability set out in the Convention.

ARTICLE 25

Article 25 is deleted as a consequence of the changes in Article 24 which make liability limits unbreakable.

ARTICLE 25A

New Article 25A makes it explicit that the employees and agents of the carrier acting within the scope of their employment are covered by the carrier limits of liability. This provision merely clarifies the intent of the original Convention, see *REED v. WISER*, 45 U.S.L.W. 2517 (2d Cir., 1977).

ARTICLE 26

This article provides for the communication of complaints to the carrier. Paragraph 2 is amended to extend the time periods within which complaints must be filed.

ARTICLE 27

Article 27, allowing actions against the legal representatives of a deceased defendant, is unchanged.

ARTICLE 28

Article 28 limits the subject matter jurisdiction of a nation's courts. *Smith v. Canadian Pacific Airways, Inc.*, 452 F.2d 798 (2d Cir. 1971).

The four forums provided for Warsaw Convention cases under paragraph 1 refer to nations, not to particular judicial subdivisions within a nation. Thus, any American court which otherwise has personal and subject matter jurisdiction can decide a Warsaw case when any one of the four named places is within the United States. Jurisdiction based on the location of the place where the ticket was issued has been interpreted by American courts to extend to suits against any carrier which maintains a regular ticket office in this country, even if the passenger's ticket was not issued by that office. See *Eck v. United Arab Airlines, Inc.*, 15 N.Y.2d 53, 203 N.E.2d 640, 255 N.Y.S.2d 247 (1964).

Paragraph 2 adds a new forum to the original four. Under this paragraph, a carrier may be sued in any nation where it maintains an establishment if the passenger also has his domicile or permanent residence there. The United States delegate to the 1971 Guatemala City Conference made it clear that the word "establishment" has the same meaning as the phrase "place of business." (Minutes of the Guatemala Conference, ICAO Doc. 9040—LC/167-1, at 114, 119.) Thus, any carrier which has a general agent in the United States could be sued here on a claim involving a passenger domiciled or permanently resident in the United States.

ARTICLE 29

Article 29 establishes a two-year time bar for Warsaw suits. It is unamended.

ARTICLE 30

This article governs the respective liabilities of successive carriers who undertake parts of an undivided carriage (as defined in Article 1(3)). It is unchanged.

ARTICLE 30A

Article 30A is added to make it clear that the Convention is silent on the carriers' rights of recourse under local law against any parties who may have caused or contributed to the damages for which the carrier is liable.

ARTICLE 31

The provisions of this article, relating to carriage by more than one mode of transportation, are unamended.

ARTICLE 32

Article 32, which nullifies all agreements infringing the rules of the Convention, is unamended.

ARTICLE 33

The Convention does not require a carrier to enter into a contract or carriage, but Article 33 is amended to refer to the provision in Article 5(3) which makes absence of electronic processing facilities an impermissible reason for a carrier's refusal to accept cargo.

ARTICLE 34

The original Article 34 entirely excluded experimental or extraordinary air carriage from the Convention. The old text has been replaced by a provision which exempts from Articles 3-8 carriage in extraordinary circumstances outside the normal scope of the carrier's business.

ARTICLE 35

The definition of the word "days" remains unchanged.

ARTICLE 35A

Article 35A is an important addition to the Warsaw Convention. It recognizes that a party may establish within its territory a system to supplement compensation available under the Convention. The supplementary compensation system may be funded by collections from passengers or by other means. The system may neither impose an increase in carrier liability nor discriminate between different carriers. Likewise, it may not discriminate among the passengers who are subject to the collections or other charges to fund the system.

ARTICLE 36-40

These final clauses of the 1929 Convention are unamended. They would not apply to the United States following denunciation of the Warsaw Convention under Article 39.

ARTICLE 41

Unamended Article 41 permits any nation which is a party to the Convention to call for a new international conference to amend the treaty.

ARTICLE 42

Article 42 provides for automatic escalation of the limit of carrier liability for passenger death or injury. A conference of parties will convene at the end of both the fifth and tenth years after the provisions of the Guatemala City Protocol come into force through ratification of Protocol 3. In both years, the liability limit will automatically increase by 12,500 SDRs (about \$14,625 at present conversion rates) unless by a two-thirds vote the conference decides otherwise.

The language in paragraph 2 that prevents the special conferences of the parties from raising liability limits by more than 12,500 SDRs does not preclude such increases. As the first clause of paragraph 1 makes clear, a general diplomatic conference convened under Article 4, which might be called in conjunction with the special conferences of the parties, could raise the liability limit to any amount by amending

the treaty. It could also adopt any other amendments. In this case, however, entry into force of such amendments would not be automatic but would require ratification.

SCOPE OF APPLICATION OF THE CONVENTION AS AMENDED

ARTICLE IV OF PROTOCOL 3

This provision is to be read together with Article 1 of the Convention. The substantive effect of this provision is to limit the applicability of Protocol 3 to international carriage as defined in Article 1 in which the places of departure and destination are in the territories of two parties to Protocol 3 or within the territory of a single party to Protocol 3 with an agreed stopping place in the territory of another state.

ARTICLE XIV OF PROTOCOL 4

This provision is to be read together with Article 1 of the Convention. The substantive effect of this provision is to limit the applicability of Protocol 4 to international carriage as defined in Article 1 in which the places of departure and destination are in the territories of two parties to Protocol 4 or within the territory of a single party to Protocol 4 with an agreed stopping place in the territory of another state.

FINAL CLAUSES OF PROTOCOL 3

ARTICLE V

This provision incorporates by reference the revisions to the Warsaw Convention made at The Hague in 1955 and at Guatemala City in 1971 and defines the resulting single instrument as the Warsaw Convention as amended at The Hague, 1955, at Guatemalá City, 1971, and by the Additional Protocol No. 3 of Montreal, 1975.

ARTICLE VI

This article maintains Protocol 3 open for signature until it comes into force.

ARTICLE VII

In accordance with Article VII, Protocol 3 is subject to ratification by states which sign it. Ratification by any state which is not a party to the Warsaw Convention, The Hague Protocol, and the Guatemala City Protocol has the effect of accession to the new single instrument defined in Article V. Paragraph 2 of this article has the important function of making clear that it is not necessary to ratify the Warsaw Convention or The Hague or Guatemala City Protocols in order to become a party to the new single instrument created by Protocol 3.

This article also makes Poland the depositary of Protocol 3.

ARTICLE VIII

Entry into force of Protocol 3 requires the ratification of 30 states.

ARTICLE IX

Article IX opens Protocol 3 to accession by non-signatory states. Accession by states not parties to the Warsaw Convention, The Hague Protocol, and the Guatemala City Protocol has the effect of accession to the single instrument defined in Article V.

Paragraph 2 of this article makes clear that it is not necessary to be a party to the Warsaw Convention or The Hague or Guatemala City Protocols in order to become a party to the new single instrument created by Protocol 3.

ARTICLE X

Article X allows states to denounce Protocol 3, with effect 6 months after notification of denunciation to the depositary. Paragraph 3 of this article is very important, because it makes clear that denunciation of the Warsaw Convention or of The Hague or Guatemala City Protocols is not to be construed as denunciation of the single instrument created by Protocol 3. Thus termination of any of these earlier treaties by a party to Protocol 3 will not affect its status as party to the single instrument created by Protocol 3. This provision follows logically from paragraph 2 of Article VII and paragraph 2 of Article IX, which make clear that ratification or accession to Protocol 3 does not require that a state be a party to the Warsaw Convention or The Hague or Guatemala City Protocols.

ARTICLE XI

In accordance with Article XI, only 3 reservations are permitted to Protocol 3, set out in subparagraphs (a), (b), and (c) of paragraph 1. Subparagraph (a) permits a state to refuse to apply the settlement inducement clause of Article 22, paragraph 3(a) in its territory. Subparagraph (b) permits a state not to apply Protocol 3 to carriage for its military authorities on aircraft registered in that state the whole capacity of which has been reserved for such authorities. Subparagraph (c) contains a very important provision which allows a state not to be bound by the out-dated cargo provisions of the single instrument created by Protocol 3 (these are the provisions adopted at The Hague in 1955). The declaration by a state not to be bound by the cargo provisions of Protocol 3 cannot be made until the state becomes a party to Protocol 4.

Paragraph 2 allows a state to withdraw a reservation at any time.

ARTICLE XII

Article XI sets out the duties of the depositary government, Poland.

ARTICLE XIII

This article applies to states which are also parties to the Guadalajara Convention and modifies the term "Warsaw Convention" in that Convention to include reference to the single instrument created by Protocol 3. This article has no effect on the United States, since it is not a party to the Guadalajara Convention.

ARTICLE XIV

Article XIV provides that Protocol 3 is to remain open for signature at the Ministry of Foreign Affairs of the depositary government. It also provides that Protocol 3 is done in four authentic texts in English, French, Russian, and Spanish and, in the case of any inconsistency, the French text is to prevail.

FINAL CLAUSES OF PROTOCOL 4

ARTICLE XV

This provision incorporates by reference the revisions to the Warsaw Convention made at The Hague in 1955 and defines the resulting single instrument as the Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975.

ARTICLE XVI

This article maintains Protocol 4 open for signature until it comes into force.

ARTICLE XVII

In accordance with Article XVII, Protocol 4 is subject to ratification by states which sign it. Ratification by any state which is not a party to the Warsaw Convention and to The Hague Protocol has the effect of accession to the new single instrument defined in Article XV. Paragraph 2 of this article has the important function of making clear that it is not necessary to ratify the Warsaw Convention or The Hague Protocol in order to become a party to the new single instrument created by Protocol 4.

This article also makes Poland the depositary of Protocol 4.

ARTICLE XVIII

Entry into force of Protocol 4 requires the ratification of 30 states.

ARTICLE XIX

Article XIX opens Protocol 4 to accession by non-signatory states. Accession by states not parties to the Warsaw Convention and The Hague Protocol has the effect of accession to the single instrument defined in Article XV.

Paragraph 2 of this article makes clear that it is not necessary to be a party to the Warsaw Convention or The Hague Protocol in order to become a party to the new single instrument created by Protocol 4.

ARTICLE XX

Article XX allows states to denounce Protocol 4, with effect 6 months after notification of denunciation to the depositary. Paragraph 3 of this article is important, because it makes clear that denunciation of the Warsaw Convention or The Hague Protocol is not to be construed as denunciation of the single instrument created by

Protocol 4. Thus termination of the Warsaw Convention or Hague Protocol by a party to Protocol 4 will not affect its status as party to the single instrument created by Protocol 4. This provision follows logically from paragraph 2 of Article XVII and paragraph 2 of Article XIX, which make clear that ratification or accession to Protocol 4 does not require that a state be a party to the Warsaw Convention or The Hague Protocol.

ARTICLE XXI

In accordance with Article XXI, only 2 reservations are permitted to Protocol 4, set out in subparagraphs (a) and (b) of paragraph 1. Subparagraph (a) permits a state not to apply Protocol 4 to carriage for its military authorities on aircraft registered in that state the whole capacity of which has been reserved for such authorities. Subparagraph (b) contains a very important provision which allows a state not to be bound by the out-dated passenger and baggage provisions of the single instrument created by Protocol 4 (these are the provisions adopted at The Hague in 1955). The declaration by a state not to be bound by the cargo provisions of Protocol 4 cannot be made until the state becomes a party to Protocol 3.

Paragraph 2 allows a state to withdraw a reservation at any time.

ARTICLE XXII

Article XXII sets out the duties of the depositary government, Poland.

ARTICLE XXIII

This article applies to states which are also parties to the Guadalajara Convention and modifies the term "Warsaw Convention" in that Convention to include reference to the single instrument created by Protocol 4. This article has no effect on the United States, since it is not a party to the Guadalajara Convention.

ARTICLE XXIV

This article is designed to resolve conflicts which occur in provisions of Protocol 3 and 4 if two or more states are parties to both Protocols and do not make the declarations contained in Article XI, paragraph 1(c) of Protocol 3 and Article XXI, paragraph 1(b) of Protocol 4. The article provides that as between such states the cargo provisions of Protocol 4 (the newest versions of the cargo rules) shall prevail and the passenger and baggage provisions of Protocol 3 (the newest versions of these rules) shall prevail.

This article would have no applicability to the United States inasmuch as it is intended that the United States would make the declarations referred to.

ARTICLE XXV

Article XXV provides that Protocol 4 is to remain open for signature at the Ministry of Foreign Affairs of the depositary government. It also provides that Protocol 4 is done in four authentic texts in English, French, Russian, and Spanish and, in the case of any inconsistency, the French text is to prevail.

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CONSTITUTION OF THE UNITED NATIONS INDUS-
TRIAL DEVELOPMENT ORGANIZATION

FEBRUARY 10, 1983.—Ordered to be printed
Under authority of the order of the Senate of February 3, 1983

Mr. PERCY, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany Treaty Doc. 97-19]

The Committee on Foreign Relations, to which was referred the Constitution of the United Nations Industrial Development Organization (UNIDO), which was signed for the United States at New York, on January 17, 1980, having considered the same, reports favorably thereon with understandings and recommends that the Senate give its advice and consent to ratification thereof.

PURPOSE

This Constitution would establish UNIDO as a specialized agency within the United Nations system.

BACKGROUND

UNIDO was set up in 1966 as an autonomous organization within the United Nations. Its basic objective is to promote and facilitate industrialization in the developing countries. UNIDO obtains its regular funding from the U.N. central budget. This budget amounts to \$36.4 million in calendar year 1983. In addition, UNIDO conducts a large variety of industrial technical assistance programs primarily with United Nations Development Program (UNDP) funds. The budget for this activity in 1983 comes to \$101.0 million. The U.S. share of the central budget is equal to the share of the overall U.N. budget, or 25 percent. While the United States accounts for about 18 percent of UNDP's budget, its share of UNIDO's technical assistance program is a bit smaller, as UNIDO obtains funds from several trust funds and bilateral donations which do not involve any U.S. contributions.

(1)

In 1975, the United Nations endorsed a recommendation that UNIDO become a specialized agency with its own constitution and budget. Negotiations began in 1976 and were concluded on April 8, 1979, when a Constitution was adopted by consensus at a U.N. Conference on the Establishment of UNIDO as a Specialized Agency. The United States signed the Constitution on January 17, 1980. The President formally transmitted the Constitution to the Senate for its advice and consent on October 5, 1981.

To date 131 countries have signed the Constitution and 87 have ratified. When 80 countries have ratified, special consultations can be held to formally decide that UNIDO will become independent. Although the necessary number of countries have now ratified the Constitution, and consultations are underway, it is unlikely that the Constitution would come into force until the U.S. ratifies the treaty. Several Western industrial countries, including Germany, the United Kingdom and Canada have withheld ratification awaiting U.S. action. On the other hand, Japan and France have already ratified. Most East bloc countries, including the Soviet Union, are also withholding ratification, evidently awaiting U.S. action.

UNIDO's record on delivering reasonably professional technical services seems at a par with other U.N. agencies. Activities range from sending many short term consultants for a few weeks to deal with highly technical problems, to sponsoring workshops and training programs for technicians and managers, to long term contracts to establish a factory or training or research facility. Use of U.S. consultants is quite common.

On the other hand, UNIDO's record in hosting large international conferences which endorse concepts contained in the New International Economic Order has been at odds with longstanding U.S. policy. At the second quadrennial conference (UNIDO II) in Lima, Peru, in 1975, a Lima Declaration and Plan of Action for Industrial Development and Co-operation was adopted over the objections of the United States. Four years later, UNIDO III endorsed a New Delhi Declaration and Plan of Action, again over U.S. objections. The thrust of these political documents is that industrial country governments should work toward a goal of ensuring that 25 percent of the world's industrial plant is located in the developing world by the year 2000 (the current percentage is about 11 percent). The documents imply that not only should developed countries provide aid to help meet these goals, but also adopt trade and internal industrial policies which insure that the goal will be reached, even if it means shutting down their own industries which are identified as being more suitably located in the Third World.

The United States has often been frustrated by its inability to exert much control over budgets or personnel policies in U.N. agencies, even though it contributes 25 percent of the central budget. U.S. current policy is to press for zero growth (in real terms) budgets. UNIDO's recent budget record is quite good. Its budgets have remained relatively stable since 1979. Its personnel record is more troublesome. According to general U.N. formulas, the United States should have around 15 percent of UNIDO's professional staff; it currently only has around 11 percent. Only three of the 27 director

level or above slots are filled by Americans, and none of the eight senior positions is from the United States.

The United States difficulties with UNIDO are to some degree related to UNIDO's current status as a part of the U.N. The organization operates on a principle of one country, one vote, so that on political and budget issues the United States and other Western countries can easily be outvoted (on budget issues, it should be noted, the Soviets and other East bloc countries tend to be as conservative as the United States, and also outvoted). The United States cannot limit its contribution to UNIDO without getting out of the U.N. as a whole. Personnel policies are also to some degree dictated from New York, so that UNIDO can claim that it is unfair to look at the U.S. share of UNIDO jobs, but rather one must look at the U.S. share of all U.N. jobs.

These institutional problems provide the most logical argument for making UNIDO a specialized agency. On political issues, the United States could at least threaten the ultimate weapon—getting out of UNIDO and taking with it 25 percent of UNIDO's central budget. On the budget, the new Constitution contains a complicated voting formula (Article 14) which essentially would let the Western donor countries plus one other country block approval of any budget. This is a breakthrough in the U.N. system. The United States would likely find allies among the Eastern bloc countries, and perhaps even some of the developing countries which have relatively large assessments. With respect to personnel, UNIDO could no longer blame its low American representation on policies dictated by the U.N. in New York. The Constitution also states that 6 percent of the assessed budget will be spent on technical assistance (about the current level), which in effect imposes a ceiling. The United States has strongly opposed the tendency for other U.N. agencies to expand technical assistance programs funded from assessed funds.

The Constitution does contain one considerable irritant to U.S. sensibilities. The preamble includes the phrase, "Bearing in mind the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order, in the UNIDO Second General Conference's Lima Declaration and Plan of Action for Industrial Development and Co-operation . . ." The first article of the operative part of the Constitution begins by stating that "The primary objective of the Organization shall be the promotion and acceleration of industrial development in the developing countries with a view to assisting in the establishment of a new international economic order."

Those familiar with U.N. lexicon will note that the preamble only "bears in mind" the New International Economic Order, and that Article I refers to a new international economic in lower case letters. The United States can therefore claim, as it did during negotiations, that Article I does not refer to any specific economic order, and that as the world economic system is constantly evolving, by definition there will be a new international economic order in the future that is different than the present. Nonetheless, the Committee decided to include an understanding with the treaty which makes clear that the United States is by no means obligated to support any of the specific recommendations contained in the Sixth Special Session documents or the Lima Declaration.

MAJOR PROVISIONS

The Constitution consists of a preamble, twenty-nine articles (in six chapters) and three annexes. The preamble contains no operational language. It recalls a variety of U.N. resolutions, notes the importance of industrialization in the development process, and states that all countries should cooperate to promote industrialization.

In Chapter I, the first article states that the "primary objective" of UNIDO shall be the "promotion and acceleration of industrial development in the developing countries with a view to assisting in the establishment of a new international economic order." As noted, the use of lower case letters and the article "a" instead of "the" was meant to delink this article from an endorsement of the specific "New International Economic Order" outlined in various U.N. resolutions and the Chapter of Economic Rights and Duties of States. Nonetheless, the understanding recommended by the Committee further clarifies that this article in no way altered previous U.S. positions on NIEO type resolutions.

The second article outlines a variety of activities for UNIDO, including; coordinating United Nations industrial development activities; providing technical assistance for industrialization, including training and pilot facilities; managing an industrial information clearinghouse; advising and assisting developing countries in formulating and executing development plans; assisting in the establishment and operation of industries, and as requested by the countries concerned, providing a forum for contacts and negotiations.

Chapter II provides for participation in UNIDO. Membership is open to all States which are members of the United Nations or a specialized agency. Article 6 provides for withdrawal from membership, not possible now without withdrawing from the United Nations. Dues would have to be paid for one year following withdrawal.

Chapter III establishes the organs of UNIDO. Article 8 specifies a General Conference composed of all members which will act upon the reports of the Board and the Director-General and determine the guiding principles and policies of the organization. Article 9 provides for the Board to be composed of 53 members elected by the Conference, with the following distribution of seats: 33 members elected from the Group of 77 (the G-77 or UN caucus of developing countries), 15 members elected from Group B (industrialized countries) and five members elected from Group D (the Soviet bloc). Article 10 establishes a Programme and Budget Committee to consist of 27 members elected by the Conference with the following distribution: 15 from the G-77, nine from Group B, and three from Group D.

Chapter IV delineates the process for approval of the program of work and the regular budget (i.e., the budget expenditures to be met from assessed contributions) and the operational budget (i.e., budget expenditures to be met from voluntary contributions). Article 14 stipulates that the Director-General shall prepare and submit a draft work program, regular budget and operational budget to the Board through the Programme and Budget Committee. The Committee will consider the Director-General's proposals and make recommendations to the Board by a two-third majority vote of those present and voting. The Board will examine the Director General's proposals and the

recommendation of the Committee and adopt the program of work, regular budget and operational budget, for submission to the Conference, by a two-thirds majority of those present and voting. The Conference will approve the submission of the Board by a two-thirds majority vote of those present and voting. The Conference may make no decision or amendment involving expenditures unless the Committee and the Board have had an opportunity to act as indicated above. By commanding more than a third of the votes in the Board and the Committee, the major donor States (i.e., Groups B and D), which share a common desire to keep United Nations agency budgets to a reasonable level, will be able to block work programs and budgets of which they disapprove, if they act together.

Article 15 provides that the scale of assessments for members shall be established by the Conference by a two-thirds majority of the members present and voting, upon a recommendations of the Board adopted by a two-thirds majority of the members present and voting. The Board's recommendation is to be based on a draft prepared by the Committee. The Constitution thereby provides a mechanism for the major donors as a group to veto a scale of assessments which they disapprove. Article 15 also stipulates that the scale of assessments shall be based to the extent possible on the scale most recently employed by the United Nations and no member shall be assessed more than 25 percent of the regular budget.

Chapter VI covers legal matters. Article 24 provides for amendments, with special, stringent provisions for amendments to financial articles. Financial amendments must be approved by two-thirds majorities of the Board and Conference respectively and must be ratified by three-fourths of the Member States. This provision protects the blocking third of the votes which major donors command in the Committee and Board.

Article 25 stipulates that the Constitution shall enter into force when at least eighty States that deposited instruments of ratification notify the Secretary General of the United Nations that they have agreed, after consultations among themselves, that the Constitution shall enter into force. However, for States that had deposited instruments of ratification but did not participate in such notification the Constitution shall come into force on such later date as they choose. The practical effort of the entry into force provisions is that the Constitution will not enter into force without the agreement and participation of major donors, including the United States.

Article 27 states that no reservations may be made to the Constitution.

ENTRY INTO FORCE

The Constitution provides that after 80 countries have ratified the Constitution, they may hold consultation and notify the Secretary General of the United Nations of their decision to bring the Constitution into force. As eighty states have already ratified the Constitution, that process could legally take place at any time. It is doubtful, however, that entry into force will occur until the United States has ratified. It is therefore likely that in practical terms the Constitution will enter into force a few months after formal ratification by the United States.

COMMITTEE ACTION

The Committee held hearings on June 29, 1982, and received testimony from the Honorable Gregory J. Newel, Assistant Secretary of State for International Organization Affairs. On August 10, 1982, the Committee considered the Constitution, and by a voice vote, ordered that it be reported favorably to the Senate with an understanding for advice and consent to ratification.

This treaty was one of a number which the Senate was unable to act on prior to adjournment. Therefore, it was automatically referred to the Committee under the rules of the Senate. On February 3, 1983, the Committee once again voted unanimously to report the treaty favorably to the Senate for advice and consent. Members present at the time of the vote were Senators Percy, Helms, Lugar, Mathias, Boschwitz, Pressler, Pell, Biden and Tsongas.

COST ESTIMATE

The Congressional Budget Office has provided the Committee with the following information on the budgetary impact of this treaty:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 7, 1982.

HON. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed the treaty document and resolution of ratification of the Constitution of the United Nations Industrial Development Organization as ordered reported with understandings by the Senate Foreign Relations Committee on August 10, 1982.

Upon entering into force, the Treaty would create the United Nations Industrial Development Organization (UNIDO) as a separate United Nations affiliated agency. The United States currently contributes to UNIDO's regular budget through the assessed contributions to the United Nations in the State Department appropriation and to the operational budget through voluntary contributions in the Foreign Assistance appropriation. The scale of assessments for the regular budget is to be based on the scale used for the United Nations' budget. Article 15 of the Treaty limits any member's assessment to no more than 25 percent of the total—the United States' share of the United Nations' assessed budget. Therefore, it is expected that no significant additional cost to the United States government will be incurred as a result of ratifying the Treaty.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director).

TEXT OF RESOLUTION OF RATIFICATION

Resolved (two-thirds of the Senators present concurring therein),
That the Senate advise and consent to the ratification of the Constitu-

tion of the United Nations Industrial Development Organization (UNIDO) and the annexes relating thereto (hereafter in this resolution referred to as the "constitution"), adopted by the United Nations Conference on the Establishment of the United Nations Industrial Development Organization as a Specialized Agency on April 8, 1979, and signed on behalf of the United States of America on January 17, 1980, subject to understandings, as follows:

(1) As used in Article 1 of the Constitution, the phrase "new international economic order"—

(A) is an evolving concept with no fixed meaning;

(B) reflects the continuing goal of members of the United Nations to find new or more effective ways of handling international economic relations and is subject to interpretation by all such members; and

(C) is not legally defined by the Constitution or by any resolution of the sixth or seventh special session of the General Assembly of the United Nations or by the Lima Declaration and Plan of Action of the United Nations Industrial Development Organization.

(2) The entry into force of the Constitution with respect to the United States of America does not abrogate or rescind any reservation made by the United States of America to any resolution, declaration, or plan of action referred to in the Constitution.

APPENDIX A

UNIDO CONSTITUTION

STATEMENT OF GREGORY J. NEWELL, ASSISTANT SECRETARY, BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE

Mr. Chairman: I appreciate the opportunity to appear before you to discuss the ratification of the Constitution of the United Nations Industrial Development Organization. As you may recall from the statement I presented at the time of my confirmation hearings, I intend to improve U.S. influence in U.N. agency policy and management. I think ratification of the UNIDO Constitution will serve those goals.

We have not always agreed with all the positions or programs adopted by UNIDO. We regret the tendency of the organization to take certain political and economic positions which are not in line with ours. But rather than attempting to judge the organization, I would like to undertake the challenge of U.S. participation in UNIDO constructively; specifically, how we can work through UNIDO to promote our values, views, and interests.

One area of common concern is technical assistance. UNIDO serves as the executing agency for technical assistance funds, primarily from the U.N. development program, which total twice its regular budget. The vast majority of UNIDO technical assistance projects are consistent with U.S. development objectives. There are numerous "success stories" from UNIDO's work in the field.

To give just one tangible example, UNIDO is involved in a continuing project developing building materials in Indonesia. New techniques for upgrading masonry and reducing construction costs are providing housing for many of Indonesia's 4½ million homeless.

It is obvious how such a project is consistent with U.S. objectives:

By providing for a basic need—housing—we lessen the likelihood of debilitating social instability and enhance the cause of peace.

The technology appropriate to the need in the developing countries—concrete blocks in this example—is not supplanting a major U.S. export.

The project is conducive to self-sustaining economic growth and social development, teaching skills transferable to private sector entrepreneurs.

Another UNIDO program—the Network of Investment Promotion Offices—is designed to bring private sector investment capital in the developed countries together with opportunities in developing countries. This is a chance to expand the indigenous private sector in developing countries, as well as an opportunity to involve the American private sector in the development process. It is not just an ideological

tenet of the United States, but a proven fact, that the bulk of transfer of technology takes place as a result of actions of the private sector. Our emphasis on the private sector stems from the strongly held conviction that unleashing the individual initiative and creativity of the people of the Third World is critical to economic growth and development.

Putting aside the programs of the organization, the strongest arguments for ratification of this Constitution are in terms of management. The President's transmittal letter has clearly spelled these out in some detail. But let me briefly summarize here. Under the present arrangement, program decisions are made by UNIDO's governing body, the Industrial Development Board, meeting annually in Vienna. Budget decisions are made by the U.N. General Assembly and its subsidiary bodies in New York. This structure leads to a diffusion of responsibility and to cumbersome procedures. The new Constitution would make the organization more responsive to its member governments.

Second, the major contributors—Western Europe, the United States, Canada, Japan, Australia, and the Soviet bloc—would have blocking power on program and budget decisions. All these countries together currently can be outvoted in the U.N. General Assembly.

Third, the United States would have a specific right of withdrawal from UNIDO, giving us flexibility, should it ever become necessary, to stop contributing to this organization without withdrawing from the U.N. I might point out that by simply having this right, without exercising it, the United States would have greater leverage over the programs of the organization.

In sum, with ratification of this Constitution, we have an opportunity to improve the effectiveness of a major organ of the U.N. system and our role in it. We have an opportunity to continue to work through the U.N. system to support industrial development in the developing countries and advance the cause of security and peace in the world community. And finally, we have an opportunity to increase our ability to demonstrate dynamism of the American political and economic systems, and their applicability as models for developing countries.

Mr. Chairman, I would also ask the President's letter of transmittal be added for the record.

Thank you, Mr. Chairman.

